



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
13 October
2017

Library News

Lyrical Lunchtimes

Thursday 19 October, 1.15pm - 2.15pm

The Law Library of Victoria and BottledSnail Productions present Lyrical Lunchtimes, the final classical concert from the 2017 series. This concert is 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 24 October, 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 or visit www.lawlibrary.vic.gov.au

More information: <https://www.lawlibrary.vic.gov.au/services/events>.

SUBSCRIBE TO THE LIBRARY BULLETIN

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

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



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

has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone

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

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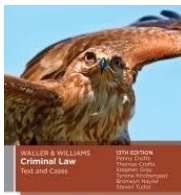
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New Books

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

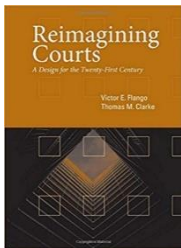
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



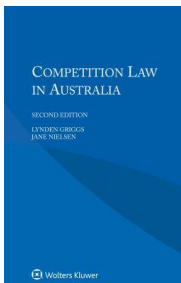
Crofts, Penny et al, *Waller & Williams criminal law: text and cases* 13th ed., LexisNexis Butterworths, Chatswood, 2016
Call number: 345.94 BRE.13 (Magistrates' Court Library)

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



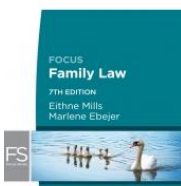
Flango, Victor E. and Clarke, Thomas M., *Reimagining courts: a design for the twenty-first century*
Temple University Press, Philadelphia, Pennsylvania, 2017
Call number: 347.01 FLA (VCAT Library)

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



Griggs, Lynden and Nielsen, Jane, *Competition law in Australia*
Kluwer Law International, Alphen aan den Rijn, The Netherlands, 2016
Call number: 343.07 GRI (VCAT Library)

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



Mills, Eithne and Ebejer, Marlene, *Family law* 7th ed., LexisNexis Butterworths, Chatswood N.S.W., 2017
Call number: 346.015 MIL.7 (Supreme Court Library)

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



Tyree, Alan L., *Banking law in Australia* 9th ed., LexisNexis Butterworths, Chatswood N.S.W., 2017
Call number: 346.082 TYR.9 (Supreme Court Library)

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



Legislation

Victorian Bills

No Victorian Bills have received a second reading since the last Library Bulletin.

Victorian Assents

No Victorian Acts were assented to since the last Library Bulletin.

Proclamations

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

- *Education and Care Services National Law Amendment Act 2017 No. 9/2017*
 - Sections 1-29, 32-67, 69-75 of the Act came into operation on 1 October 2017 (SG303 12.9.2017)
- *Commercial Passenger Vehicle Industry Act 2017 No. 35/2017*
 - Part 3 Division 1 (sections 21-34) of the Act came into operation on 9 October 2017 (SG331) 3.10.2017)
- *Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017 No. 38/2017*
 - Part 6 (sections 44-52) of the Act came into operation on 11 October 2017 (SG331) 3.10.2017)

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

- *Jury Directions and Other Acts Amendment Act 2017 No. 37/2017*
 - Sections 1-20, 22, 24 of this Act came in by forced commencement on 1 October 2017 s.2(3)

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)

High Court Cases

CRIMINAL LAW - Sentencing - Current sentencing practices - Incest - Crown appeal on ground of manifest inadequacy - Where s5(2) of Sentencing Act 1991 (Vic) provided that in sentencing an offender a court must have regard to current sentencing practices - Where Court of Appeal held that sentence not wholly outside permissible range reflected in current sentencing practices - Where Court of Appeal held that current sentencing so low as to reveal error in principle - Whether latter conclusion required appellate intervention to correct error reflected in sentence the subject of appeal.

WORDS AND PHRASES - "comparable cases", "current sentencing practices", "manifest inadequacy", "maximum penalty", "reasonable consistency". Sentencing Act 1991 (Vic), s5(2).

Director of Public Prosecutions v Dalgliesh, Charlie (a Pseudonym)

[\[2017\] HCA 41](#)

11/10/2017

Victorian Supreme Court Cases

Court of Appeal

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of child under 16 (six counts) - Attempted sexual penetration of child under 16 (two counts) - Verdicts properly open to jury - No substantial miscarriage of justice - Leave to appeal granted - Appeal dismissed - Criminal Procedure Act 2009 (Vic) s276(1)(a) and s276(1)(c).

CRIMINAL LAW - Appeal - Conviction - Evidence - Jury directions - Delay in complaint - Whether trial judge erred in refusing application for forensic disadvantage direction - Loss of chance to obtain forensic evidence - Loss of chance to explore circumstances of offending - Whether 'significant forensic disadvantage' - Leave to appeal granted - Appeal dismissed - Longman v The Queen (1989) 168 CLR 79; PT v The Queen [2011] VSCA 43; Mulligan (a Pseudonym) v The Queen [2017] VSCA 94 discussed - Greensill v The Queen (2012) 37 VR 257; Jurj v The Queen [2016] VSCA 57; Pate (a Pseudonym) v The Queen (2015) 250 A Crim R 425 distinguished - Jury Directions Act 2015 (Vic) s39 - Criminal Procedure Act 2009 (Vic) s276(1)(b).

CRIMINAL LAW - Appeal - Sentence - Sexual penetration of child under 16 (six counts) - Attempted sexual penetration of child under 16 (two counts) - Total effective sentence nine years' imprisonment - Non-parole period of six years - Whether manifestly excessive - Exceptional circumstances found - Sentences not manifestly excessive - Leave to appeal refused.

CRIMINAL LAW - Appeal - Sentence - Sexual penetration of child under 16 (six counts) - Attempted sexual penetration of child under 16 (two counts) - Total effective sentence nine years' imprisonment - Non-parole period of six years - Whether trial judge erred in approach to sentencing for multiple offences - Leave to appeal granted - Appeal dismissed.

Robbins, Clinton (a Pseudonym) v The Queen [2017] VSCA 288

Tate, Whelan JJA, and Macaulay AJA

[\[2017\] VSCA 288](#)

11/10/2017

CRIMINAL LAW - Appeal - Sentence - Commonwealth and State offences - Attempted aggravated burglary; criminal damage; using carriage service to menace, harass, or cause offence and related summary offences - Four years and six months' imprisonment - Non-parole period of three years - Whether intellectual impairment reduced moral culpability - General deterrence not appropriate - Whether sentence manifestly excessive - Early guilty plea - Significant criminal history - Appeal allowed - Appellant resentenced to three years and four months' imprisonment with non-parole period of two years and two months.

Hayes, Leroy v The Queen

Kaye JA and T Forrest AJA

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

09/10/2017

CRIMINAL LAW - Appeal - Sentence - Historic sexual offences against children - Indecent assault - Procuring act of gross indecency - Multiple offences - Sentence 3 years - Partially suspended - Whether manifestly excessive - Guilty plea - Remorse - Rehabilitation - General deterrence - Delay - Understanding of harm - Serious sexual offender - Subsequent convictions for like offending - Whether irrelevant consideration applied - Whether error in partial cumulation - Sentence within range - No specific error - Leave to appeal refused - Sentencing Act 1991 s6B(2)(a).

Lane, Leslie Charles v The Queen

Ferguson CJ and Maxwell P

[\[2017\] VSCA 289](#)

11/10/2017

CRIMINAL LAW - Appeal - Sentence - Negligently causing serious injury (two charges) - Reckless conduct endangering persons - Driving motor vehicle - Sentence of four years and nine months' imprisonment - Non-parole period of two years and nine months - Whether sentence manifestly excessive - Early guilty plea - Genuine remorse - Youthful and immature offender - Good character - General deterrence, specific deterrence and denunciation important - Leave to appeal refused - *Harrison v The Queen*; *Rigogiannis v The Queen* (2015) 49 VR 619.

Papachristodoulou, Eric v The Queen

Kaye JA and T Forrest AJA

[\[2017\] VSCA 284](#)

09/10/2017

CRIMINAL LAW - Appeal - Sentence - Plea of guilty - Cultivating commercial quantity of cannabis - Possessing prohibited weapon - Sentence of 6 years and 6 months' imprisonment with non-parole period of 4 years and 6 months - Whether applicant correctly characterised as principal - Whether sentence manifestly excessive - Role in cultivation of cannabis - Consistency in sentencing - Application for leave to appeal granted - Appeal allowed - Resentenced to 5 years' imprisonment with a non-parole period of 3 years and 6 months - *Nguyen v The Queen* (2016) 311 FCR 289.

Nguyen, Ngoc v The Queen

Kaye JA and T Forrest AJA

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

09/10/2017

CRIMINAL LAW - Appeal - Sentence - Riot - Parity - Sentences imposed on co-offenders by different judges - Whether sentencing judge employed two-stage process - Requirement to compare applicant's role with co-offender's as part of instinctive synthesis - No error - Application for leave to appeal refused - *DPP (Cth) v Gregory* (2011) 34 VR 1, *Lowe v The Queen* (1984) 154 CLR 606 considered.

Kumas, Mehmet v The Queen

Maxwell P, Weinberg and Priest JJA

[\[2017\] VSCA 287](#)

06/10/2017

CRIMINAL LAW - Appeal - Sentence - State and Commonwealth offences - Grooming - Use of carriage service - Knowingly possess child pornography - Sentence 18 months - Recognisance release order - Community corrections order - Whether order uncertain - Discrepancy between order pronounced on sentence and formally recorded - Clerical error - No uncertainty - Whether manifestly excessive - Guilty plea - Remorse - Personal circumstances - No 'real' victim - Gravity of offending - Aggravation - Sexually explicit language - Leave to appeal refused - Sentencing Act 1991 s104A(1).

Meadows, Aaron v The Queen

Ferguson CJ and Maxwell P

[\[2017\] VSCA 290](#)

11/10/2017

CRIMINAL LAW - Application for leave to appeal against conviction - Applicant convicted of 38 charges of theft - Joint criminal enterprise - Prosecution alleged joint criminal enterprise involving applicant and co-accused - Jury direction as to verdict in case of joint criminal enterprise - Whether conviction unsafe - Leave to appeal granted.

Dailakis, Evangelos v The Queen

Santamaria JA

[\[2017\] VSCA 281](#)

03/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Applicant convicted of indecent assault and rape - Sentence of 8 years and 2 months' imprisonment with non-parole period of 5 years and 8 months - Whether sentence manifestly excessive - Whether orders for cumulation manifestly excessive - Whether principle of totality offended - Leave to appeal granted in part.

Underwood, Zachary (a Pseudonym) v The Queen

Santamaria JA

[\[2017\] VSCA 282](#)

03/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Attempting to pervert the course of justice - Sentence of 3 years' imprisonment with non-parole period of 2 years - Whether sentence manifestly excessive - Gravity of offending - Current sentencing practices - Where offence relates to murder charge of different co-offender - *Tognolini v The Queen* (2011) 32 VR 104 discussed - *Director of Public Prosecutions v Oksuz* (2015) 47 VR 731 discussed and applied - Leave to appeal refused.

CRIMINAL LAW - Application for leave to appeal against sentence - Two charges of attempting to pervert the course of justice - Sentence of 3 years' imprisonment with non-parole period of 2 years - Whether sentence manifestly excessive - Whether disparity with sentence imposed on co-offender - Where offence relates to murder charge of different co-offender - Leave to appeal refused.

Beljulji, Megan v The Queen; Semaan, Hanna v The Queen

Santamaria JA

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

05/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Recklessly causing serious injury - Sentence of 1 year and 6 months' imprisonment with community corrections order - No non-parole period - Fresh evidence - Evidence as to mental health of applicant at time of offending and sentence - Where evidence in form of psychologist reports - Leave to appeal granted.

Dang, Maryan v The Queen

Santamaria JA

[\[2017\] VSCA 280](#)

03/10/2017

LEGAL PRACTITIONERS - Disciplinary powers of Legal Services Commissioner - Whether Commissioner has power to summarily dismiss complaint before completing investigation - Legal Profession Act 2004 s4.2.10(1), s4.4.7, s4.4.13, s4.4.14 - Application for leave to appeal granted but appeal dismissed.

LEGAL PRACTITIONERS - Formalities for a complaint - Approved complaint form - Whether an email from a complainant requesting resumption of investigation of a previously dismissed complaint constitutes a new complaint - Legal Profession Act 2004 s4.2.6, s4.2.10(1)(c).

APPEAL - Whether judge's factual finding that Commissioner had decided that a complaint did not require further investigation should be disturbed on appeal - Robinson Helicopter Co Inc v McDermott (2016) 331 ALR 550 applied.

Victorian Legal Services Commissioner v Cahill, Francis

Tate JA, Kyrou and Hansen JJA

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

06/10/2017

Commercial Court

CONTRACT - Construction of a contract - Whether surrounding circumstances can be taken into account where there is no ambiguity - Consideration of the commercial purpose of the contract - Whether a term can be implied to give a contract commercial efficacy in view of the commercial purpose - Breach of directors' duties.

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

Robson J

[\[2017\] VSC 578](#)

05/10/2017

CONTRACT - Terms agreed at mediation - Whether parties intended to be immediately bound or bound only when formal terms executed - Objective intention of the parties - Masters v Cameron (1954) 91 CLR 353.

Al Azhari, Ihab v 27 Scott Street P/L & Ors

Almond J

[\[2017\] VSC 600](#)

05/10/2017

CORPORATIONS - Reinstatement of deregistered company - Whether applicants are 'persons aggrieved' - Exercise of discretion - Whether reinstatement just - Corporations Act 2001 (Cth), s601AH(2) - Application refused.

In the matter of: Sippy Downs Operations P/L (in liquidation) (ACN 106 672 208) Simitzis, Peter and Simitzis, Georgia v Australian Securities and Investments Commission

Matthews JR

[\[2017\] VSC 614](#)

11/10/2017

PRACTICE AND PROCEDURE - Application to transfer and/or stay proceedings - Whether in the interests of justice to transfer proceedings from the Supreme Court of Victoria to the Supreme Court of New South Wales - Where only connecting factor with Victoria was location of plaintiff administrators and legal team - Proceeding transferred - Inappropriate to consider stay application - Jurisdiction of Courts (Cross-vesting) Act 1987 (Vic), s5(2)(b)(iii).

Pasminco Cockle Creek Smelter P/L (subject to deed of company arrangement) (administrators appointed) (ACN 000 083 670) v Bunderra Holdings P/L (ACN 169 042 433) and Stevens Holdings P/L (ACN 002 386 450)

Kennedy J

[\[2017\] VSC 558](#)

22/09/2017

PRACTICE AND PROCEDURE - Application to transfer proceedings to the Supreme Court of New South Wales - The plaintiff supplied scaffolding for hire to companies in New South Wales - The plaintiff alleges that the scaffolding is now in the hands of the defendant, in New South Wales - The plaintiff, a company registered in Victoria, commenced proceedings for the return of the scaffolding and claimed for damages or an account of profits against the defendant - Whether in the interests of justice that the proceeding be transferred to the Supreme Court of New South Wales - Witnesses located in Victoria, suburban and rural New South Wales and the Australia Capital Territory - Application refused - Section 5(2)(b)(iii) of Jurisdiction of Courts (Cross-vesting) Act 1997 (Cth).

Smartscaff P/L v Capital Scaffolding P/L (No 1)

Robson J

[\[2017\] VSC 606](#)

04/10/2017

PRACTICE AND PROCEDURE - Court appointed expert - When appropriate - Form of directions to ensure appropriate range of expert opinion - Application granted - Civil Procedure Act 2010, s65M, s65O.

Alphington Developments P/L v Amcor Ltd

Hargrave J

[\[2017\] VSC 610](#)

05/10/2017

PRACTICE AND PROCEDURE - Cross-vesting application - Interests of justice - Application to transfer proceedings from the Supreme Court of Victoria to the Supreme Court of New South Wales - Whether New South Wales is more appropriate forum - Modest sum in dispute - Application dismissed - Jurisdiction of Courts (Cross-Vesting) Act 1987 (Vic), s5(2).

Open Universities Australia Pty Ltd v The TAFE Commission trading as "TAFE NSW - Sydney Institute" (ABN 98 375 029 590)

Elliott J

[\[2017\] VSC 617](#)

04/10/2017

TRUSTS AND TRUSTEES - Application for approval of the amalgamation of two trust funds under a charitable trust established in 1887 - Provisions for establishment of a body corporate to be substituted for the plaintiffs as trustees of the charitable trust on the same trusts - *Ballard v Attorney-General for Victoria* (2010) 30 VR 413 - *Re Dion Investments Pty Ltd* (2014) 87 NSWLR 753.

TRUST AND TRUSTEES - Power of Court to approve amendments to the terms of charitable trusts - Trustee Act 1958 s48(1) and s63.

Robson, Andrew Morris; Bonnington, Jay and Owen, Gail Ann (as Trustees of the Queen's Fund) v The Attorney-General for the State Of Victoria

Croft J

[\[2017\] VSC 585](#)

06/10/2017

WRIT - Application for orders for possession - Injunctions restraining the sale - Transfer or encumbrance of land - Defaults in respect of loans and related guarantees under registered second mortgage security - Position of unregistered transferee of first mortgage - Serious issues to be tried - Balance of convenience considerations - Transfer of Land Act 1958, s76(1) and s77.

Panorama Investments P/L (ACN 148 905 864) v Mellos, Nick and Dixon, Stephen Robert as joint and several trustees of the bankrupt estate of Sevdalis, Dr Nicholas William (a bankrupt); Native Bond P/L (ACN 006 589 055) (in liquidation); Bendigo Adelaide Bank Ltd (ACN 068 049 178); N.B. Services (Aust) P/L (ACN 070 024 985) and Champion Investment Group P/L (ACN 607 958 592)

Digby J

[\[2017\] VSC 608](#)

22/08/2017

Common Law Division

ACCIDENT COMPENSATION - Application by a worker under s134AB(4) of Accident Compensation Act 1985 to bring proceedings for damages for an injury - Obligation on the Victorian WorkCover Authority (the Authority) to advise the worker under s134AB(7) - Power of the Authority under s134AB(16)(a) - Where the Authority is of the view, mistakenly, that the worker's entitlement to damages was governed by the Transport Accident Act 1986 - Worker did not make application within time provided in s134AB(16)(b) - Whether error as to jurisdictional fact or jurisdictional error by the Authority in exercise of the power under sub-s 16(a) - Whether declaratory relief available - Discretion not to grant relief where lack of utility.

Gievski, Goce v Victorian WorkCover Authority

Keogh J

[\[2017\] VSC 598](#)

04/10/2017

ADMINISTRATIVE LAW - Judicial review - Municipal City Council as enforcement agency for infringements of road safety rules - Issuing of infringement notice to driver and imposition of penalty - Expiation of offence on payment - Council's refusal to withdraw infringement notice - Driver's refusal to pay penalty - Statutory requirement to proceed to Court prosecution - Prosecution instigated - Availability of certiorari to quash decision to issue infringement notice - Availability of prohibition or injunction to prevent prosecution - Infringements Act 2006 (Vic), Part 2.

Crowther, Andrew v Whitehorse City Council

Mukhtar AsJ

[\[2017\] VSC 594](#)

03/10/2017

ADMINISTRATIVE LAW - Judicial review - Remedies - Certiorari - Availability - Voluntary organisation - Disciplinary procedures - Preliminary investigation - Decision to charge volunteer members with disciplinary offences - Decision to suspend members pending outcome of disciplinary action - Whether decisions affected legal rights - Procedural fairness - Whether there was a right to be heard before disciplinary charges brought - Victoria State Emergency Service Act 2005 (Vic) s31 and s32 - Victoria State Emergency Service Regulations 2006 (Vic) s6, s8, s9, s10, s11, s12, s13, s14 and s15.

Chapman, Raymond Leslie; Shaw Chapman, Daniel Christopher and Shaw Chapman, Paul William v Chief Officer of the Victoria State Emergency Service and Victoria State Emergency Service Authority

Emerton J

[\[2017\] VSC 547](#)

13/09/2017

ADMINISTRATIVE LAW - Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 - Statutory right of appeal from decision of judicial registrar - Denial of natural justice where accused ordered to leave the Court - Power to remove accused from Court considered - King v Abrahams (1895) 21 VLR 343 applied - Certiorari granted.

Boros, Daniel v O'Keefe, R T, Judicial Registrar, Dandenong Magistrates' Court and Baker, Shelley Janelle, Traffic Camera Office

Riordan J

[\[2017\] VSC 560](#)

18/09/2017

DEFAMATION - Limitation of action - Extension of time application - Appeal from associate judge - Whether plaintiff established that it was not reasonable to have commenced a proceeding within one year of the date of publication - Nature of the court's discretion as to the period of extension when satisfied that it was not reasonable - Proper construction of enabling section - Limitation of Actions Act 1958 (Vic) s5 (1AAA) and s23B.

DEFAMATION - Pleadings - Whether proposed amendment of statement of claim sufficiently alleged that the defendant published the defamatory matter.

LIMITATION OF ACTIONS - Defamation - Extension of time application - Appeal from associate judge - Whether plaintiff established that it was not reasonable to have commenced a proceeding within one year of the date of publication - Nature of the court's discretion as to the period of extension when satisfied that it was not reasonable - Proper construction of enabling section - Limitation of Actions Act 1958 (Vic) s5 (1AAA) and s23B.

Johnston, Stuart v Holland, Nicola (No 2)

John Dixon J

[\[2017\] VSC 597](#)

04/10/2017

ENVIRONMENT PROTECTION - Appeal - Operation of proposed organic waste recycling and product manufacturing facility - Order of Victorian Civil and Administrative Tribunal declaring that a works approval for facility was not required - Whether issue related to interpretation or application of a planning scheme or use and development of land - Whether VCAT had jurisdiction to determine issue - Following successful mediation in the court, orders sought upholding appeal and declaring that VCAT did not have jurisdiction and that a works approval was not required for facility - Whether orders would declare rights in relation to issues of jurisdiction and law - Obligation of court to give independent consideration to issues before doing so - 'interpretation', 'application' - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1), Planning and Environment Act 1987 (Vic) s149A(1), Environment Protection Act 1970 (Vic) s19A(1).

Environment Protection Authority v Ileowl P/L and Wodonga City Council

Bell J

[\[2017\] VSC 625](#)

13/10/2017

JUDICIAL REVIEW - Application for strike out or summary dismissal - Plaintiff contends that a direction by the defendant that he provide a urine sample for testing was ultra vires for failure to comply with a requirement that the sample be tested by an 'officer' - Whether claim is intelligible - Whether it has any real prospect of success - Whether declaratory relief would be granted - Strike out and summary judgment refused - Corrections Act 1986 (Vic) s29A.

Rich, Hugo Alistair v Ryan, Brett (Acting in his capacity as General Manager of HM Prison Barwon and for Corrections Victoria)

Lansdowne AsJ

[\[2017\] VSC 607](#)

11/10/2017

JUDICIAL REVIEW AND APPEALS - Appeal from Magistrates' Court pursuant to Criminal Procedure Act 2009 (Vic), s272 - Question of law - Whether Magistrate erred in identifying and applying applicable legal test - Meaning of sufficient grounds for revocation of enforcement order - No error - Appeal dismissed - Infringements Act 2006 (Vic), s66A.

Kyria, George v Traffic Camera Office and Magistrate Clifford of the Magistrates' Court of Victoria

Macaulay J

[\[2017\] VSC 630](#)

13/10/2017

LEGAL PRACTITIONERS - Barrister - Application to restrain barristers from acting - Application brought under inherent jurisdiction - Whether real possibility that barristers will be required to give evidence at trial - Application dismissed - Grimwade v Meagher [1995] 1 VR 446; Reardon v Digney [2017] VSC 574; Legal Profession Uniform Conduct (Barristers) Rules 2015 r 101(d).

Huntington, Ian v Kew Golf Club and Andelaje P/L

Zammit J

[\[2017\] VSC 612](#)

04/10/2017

PRACTICE AND PROCEDURE - Application for leave to file a Statement of Claim in contribution proceedings - Whether Wrongs Act 1958 (Vic) Part IV contribution claims allow for pleadings - Civil Procedure Act 2010 (Vic) s23 - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r1.14, r11.01, r11.15(1), r11.15(4)(a) and r11.15(5) - Application granted.

Meli, Ugo Raoul Constantino Giovanni v Ceva Logistics (Australia) P/L & HRX TPT P/L

Clayton JR

[\[2017\] VSC 603](#)

06/10/2017

PRACTICE AND PROCEDURE - Application to revoke an order declaring a person a vexatious litigant - Whether in the interests of justice to revoke an order under the Vexatious Proceedings Act 2014 - General related considerations - Vexatious Proceedings Act 2014, s65 and s69(1)(b).

The Attorney-General for the State of Victoria v O'Sullivan, Dale Gary

Digby J

[\[2017\] VSC 592](#)

21/08/2017

PRACTICE AND PROCEDURE - Confiscation of property - Restraining order over property of the applicant - Application for provision of legal aid on appeal against sentence - Underlying purpose - Whether court to consider practical consequences - Confiscations Act 1997 (Vic), s143.

In the matter of the Confiscations Act 1997 and In the matter of an alleged offender, Cardamone, Michael. Between Cardamone, Michael v The Director of Public Prosecutions and Victoria Legal Aid

J Forrest J

[\[2017\] VSC 618](#)

13/10/2017

PRACTICE AND PROCEDURE - Summary dismissal of proceedings pursuant to s62 of the Civil Procedure Act 2010 (Vic) - Applicable principles - Application granted - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd [2013] VSCA 158; Mandie v Memart Nominees Pty Ltd, [2016] VSCA 4.

IMMUNITY FROM SUIT - Applicable principles - Scope of immunity provision - Requirement and meaning of 'good faith' - Legal Profession Uniform Law Application Act 2014 (Vic) and Legal Profession Uniform Law (Vic), s467; - Board of Fire Commissioners of NSW v Ardouin, (1961) 109 CLR 105; Suatu Holdings Pty Ltd v Australian Postal Corporation, (1989) 86 ALR 532; Puntoriero v Water Administration Ministerial Corporation, (1999) 199 CLR 575; Rowson v Alpass, [2017] VSC 401; Mid Density Developments Pty Ltd v Rockdale Municipal Council, (1993) 44 FCR 290; Bankstown City Council v Alamo Holdings Pty Limited, (2005) 223 CLR 660.

Pumpa, Anthony William v Victorian Legal Services Board and McClintock, Eoin

Derham AsJ

[\[2017\] VSC 629](#)

13/10/2017

PROPERTY - Restrictive covenant - Two covenants over two separate properties - Application to discharge or modify restrictions in covenants pursuant to the Property Law Act 1958 (Vic), s84 - Modification of both covenants to allow for excavation works to be carried out 'for residential development or use of the land' - One covenant contains single dwelling restriction - Whether discharge or modification will not substantially injure the persons entitled to the benefit - Application granted - Applicable legal principles - Property Law Act 1958, s84(1)(c) & (2)(b).

Jiang, Pei Yao v Monaygon P/L (ACN 005 621 161)

Derham AsJ

[\[2017\] VSC 591](#)

03/10/2017

REAL PROPERTY - Caveat - Summary removal - Oral contract for services on a quantum meruit between registered proprietor and caveator - Caveator to perform work to prepare property for sale - Caveat wrongly claiming a freehold estate on the grounds of an implied resulting or constructive trust - Whether any alternative ground for a different estate or interest revealed - Whether caveat would be amended - Caveat removed - Transfer of Land Act 1958, s90(3).

Yamine, Christopher John v Mazloum, Jean & Ors

John Dixon J

[\[2017\] VSC 601](#)

03/10/2017

RESTRICTIVE COVENANT - Restriction to shop and one dwelling - Small local shopping strip - Modification sought to shop and three dwellings - Whether restriction to one dwelling obsolete - Whether any substantial injury would be occasioned to benefited land by the modification - No objection from any benefited person - Restriction to one dwelling in conjunction with a shop held to be obsolete within second limb of s84(1)(a) given change in retail behaviour - No significant precedential effect - Likely increased height a planning matter - Section 84(1)(c) also satisfied - Property Law Act 1958 s84(1)(a) and (c).

Polixronis Super P/L (ACN 167 051 210)

Lansdowne AsJ

[\[2017\] VSC 551](#)

11/09/2017

WILLS AND ESTATES - Costs - Offers of compromise - Award of costs in probate cases - Legal principles - Exceptions to an order that costs follow the event - Application of exceptions - Second exception applies - No order as to costs.

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

Garde J

[\[2017\] VSC 611](#)

12/10/2017

WILLS AND ESTATES - Executors seeking to finalise administration of estate - Risk of contingent liability to estate - Where risk is remote - Whether executors justified in making final distribution of estate - Supreme Court (General Civil Procedure) Rules 2015, r54.02.

Barr, James Eric (as an executor of the estate of Susie Rockman, deceased) and Delmont Crest P/L (ACN 053 633 971) (as trustee of the Rockman Family Trust) v Rockman, Lionel and Merkel, Ronald (as an executor of the estate of Susie Rockman, deceased)

McMillan J

[\[2017\] VSC 581](#)

28/09/2017

Criminal Division

CRIMINAL LAW - Bail - Director's appeal against magistrate's grant of bail - Respondent charged with 35 offences relating to possession and trafficking drug of dependence, trafficking commercial quantity of drug of dependence, weapons charges and driving whilst disqualified - Whether grant of bail 'reasonably open' to magistrate - Error to have granted bail - Appeal allowed - Order granting bail set aside - Fresh application for bail on new material refused - Circumstances not exceptional - Respondent unacceptable risk of committing further offences while on bail - Bail Act 1977 s18A.

In the matter of s18A the Bail Act 1977 (Vic) and In the matter of an appeal by the Director of Public Prosecutions [DPP] against an Order granting Bail to Molinaro, Francesco

Weinberg JA

[\[2017\] VSC 624](#)

11/10/2017

CRIMINAL LAW - Sentence - Manslaughter - Theft - Arson - Pleas of guilty - Accused on bail at the time of the offending - Gunshot from stolen moving vehicle - Fatal injury - Remorse - Rehabilitation prospects - Family support - Severe polysubstance abuse.

The Queen v Atesok, Serdar

Lasry J

[\[2017\] VSC 599](#)

28/09/2017

CRIMINAL LAW - Special Hearing - Disposition under s26 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) following finding by jury at special hearing that the accused committed the offence of murder - Accused hearing impaired and intellectually disabled - Application of principles in s39, s40 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) - Custodial Supervision Order.

Director of Public Prosecutions [DPP] v Fairest, Jake

Jane Dixon J

[\[2017\] VSC 428](#)

19/04/2017

CRIMINAL LAW - Special Hearing - Disposition under s26 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) following finding by jury at special hearing that the accused committed the offence of murder - Accused profoundly deaf and intellectually disabled - Application of principles in s39, s40 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) - Non-Custodial Supervision Order.

Director of Public Prosecutions [DPP] v Fields, Georgia

Jane Dixon J

[\[2017\] VSC 530](#)

06/09/2017

CRIMINAL LAW - Special Hearing - Disposition under s26 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) following finding by jury at special hearing that the accused committed the offence of murder - Accused profoundly deaf and intellectually disabled - Application of principles in s39, s40 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) - Custodial Supervision Order - Intensive Residential Treatment Programme at Disability and Forensic Assessment and Treatment Unit under s152 Disability Act 2006 (Vic).

Director of Public Prosecutions [DPP] v Toohey, Warwick

Jane Dixon J

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

27/02/2017

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.

BUILDING CONTRACT - Payment claim unpaid - Application for judgment - Adjournment sought by defendant's director - No defence shown - Adjournment refused and judgment entered - Building and Construction Industry Security of Payments Act 2002 (Vic).

Averill v Usmani's Australia Pty Ltd

[\[2017\] VCC 1430](#)

Judge Anderson

6/10/2017

Magistrates' Court of Victoria Cases

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

Articles

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

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

Arbitration

Dispute resolution schemes - Fair process effect - Cost - Delay - Early resolution - Expectation - Australian Financial Complaints Authority - Research study - Australia

Orchard, A. "Towards a practical model to improve outcome acceptance in dispute resolution." (2017) 28(3) ADRJ 181-190.

Transnational business - International commercial arbitration - Commercial courts - Law reform proposals - Comparative analysis - Asia Pacific region - Dubai - Singapore - Australia

Albin, T. "The dispute resolution lag in Australia: the time to be aggressive is now." (2017) 28(3) ADRJ 149-154.

Contract Law

Construction contracts - Contra proferentem - Exclusion clauses - Interpretation - Professional negligence - Canada Steamship Lines Ltd v The King - Persimmon Homes Ltd v Ove Arup and Partners Ltd - Canada - UK

Shaw-Mellors, A. "Negligence construction: does anything remain of Canada Steamship?" [2017] (7) JBL 610-616.

Fraudulent misrepresentation - Innocent misrepresentation - Pre-contractual misrepresentation - Rescission - Zurich Insurance v Hayward - UK

Loi, K. "Pre-contractual misrepresentations: mistaken belief induced by mis-statements." [2017] (7) JBL 598-609.

Illegitimate pressure theory - Excusable consent - Causation - Responsibility - Duress - The Siboen and the Sibotre - UK

Loke, A. "Excusable consent in duress." (2017) 37(3) Legal Studies 418-436.

Promise theory - Social or domestic agreements - Doctrine of women - History - UK

Saprai, P. "Balfour v Balfour and the separation of contract and promise." (2017) 37(3) Legal Studies 468-492

Courts

History - Supreme Court of Victoria - Sport - Judges - Judicial cricketers' trophy - Book, Judging for the people - Victoria

Harper, D. "Supreme Court of Victoria v Australian Cricket Society." [2017] 161 VBN 24-26.

Privacy - Criminal offenders - Publicly named - Media - Court proceedings - Leveson inquiry - Contempt of Court Act 1981 (UK), s4(2) - Anonymity (Arrested Persons) Bill (UK) - UK

Easton, R. "The price of open justice." (2017) 161(34) Sol J 30-31.

Witness - Counsel - Testify - Questions - Examination - Court room - Evidence - Victoria

Palmer, A. and G. Hampel. "Direct questions and leading questions." [2017] 161 VBN 40-43.

Environment Law

Separation of powers - Comparative analysis - New Zealand Environment Court - Queensland Planning and Environment Court - New South Wales Land and Environment Court - Swedish Environment Courts - National Green Tribunal India - Australia - New Zealand
Warnock, C. "Reconceptualising specialist environment courts and tribunals." (2017) 37(3) *Legal Studies* 391-417.

Human Rights

Council of Australasian Tribunals - Meaning of ordinary person - Aboriginal offenders - Immigrants - Women - Provocation - Discrimination - *Bugmy v The Queen* - *Moffa v The Queen* - Research study - Law reform proposals - Australia
Chief Justice Martin AC. "Access to justice in multicultural Australia." (2017) 44(8) *Brief* 22-28.

Insurance law

Co-insurance - Contract terms - Implied terms - Insurers - Rights - Subrogation - Waiver clause - UK
Gures, O. "Subrogation against a contractual beneficiary: a new limitation to insurers' subrogation?" [2017] (7) *JBL* 557-575.

Intellectual Property

Trade marks - Offensive words - Brands - Scandalous trade marks - Non-disparagement clause - Lanham Act (USA) - Trade Marks Act 1995 (Cth) - USA - Australia
MacInnis, A. and S. Green. "What slant should the law take on 'scandalous' trade marks?" (2017) 37(9) *LSJ* 26-27.

Legal Profession

Judicial officers - Judges - Barristers - Education - Chief Justice Marilyn Warren - Victoria
Schoff, G. and G. Costello. "The Judicial College of Victoria: master of its fate." [2017] 161 *VBN* 38-39.

Personalia - Hon Rosemary Anne Balmford AM - Judge - Supreme Court of Victoria - Women - Victoria
Tate, P. and C. Balmford. "Rosemary Balmford AM: obituary." (2017) 91(10) *LIJ* 21.

Personalia - Michael McGarvie - Leadership - Managing complaints - Achievements - Relationships - Victorian Legal Services Board - Victoria
Costello, G. and J. Rudd. "Innovate, regulate: Michael McGarvie, Victorian Legal Services Commissioner." [2017] 161 *VBN* 46-50.

Personalia - Professor, Hon George Hampel AM QC - Victorian Bar - Justice of the Supreme Court of Victoria - Advocacy law - Teaching - Victoria
Brimer, E. "George Hampel AM QC." [2017] 161 *VBN* 16-19.

Practice & procedure

Judicial opinions - *Patel v Mirza* - Illegality approach - Rule-based approach - Range of factors approach - UK
Lim, E. "Ex Turpi causa: reformation not revolution." (2017) 8(5) *Modern L R* 927-941.

Local authorities - Criminal behaviour - Human rights - Public safety - Public nuisance - Anti-social Behaviour, Crime and Policing Act 2014 (UK) - UK
Brown, K. "The hyper-regulation of public space: the use and abuse of public spaces protection orders in England and Wales." (2017) 37(3) *Legal Studies* 543-568.

Torts

Defamation - Triviality defence - Damages
- Defamation Act 2005 (Vic), s33 - Smith v
Lucht - Wilson v Bauer Media (No 6) -
Barrow v Szanto - Victoria
**Whiteman, S. "When harm is a trivial
matter." (2017) 91(10) LIJ 30-33.**

Trusts

Trust models - Intention - Fairness -
Quistclose Investments Ltd v Rolls Razar
Ltd - UK
**Hudson, E. "A normative approach to
the quistclose trust." (2017) 80(5)
Modern L R 775-811.**

INFORMATION SESSIONS

The Law Library of Victoria hosts regular information sessions on how to use specific legal research databases.

If you have suggestions for future information sessions, please send them to llv@courts.vic.gov.au

Visit our website for upcoming events www.lawlibrary.vic.gov.au



LIBRARY FACTS

- The Law Library of Victoria is regarded as a library of national significance and is one of the largest law collections in the state, containing over 120,000 volumes.
- The oldest book in the collection is Statham's Abridgement of 1489, a case law digest.
- The largest portrait in the library is of John Schutt, the first librarian, who died in office after 54 years in the position.

Law Library of Victoria

210 William Street
Melbourne VIC 3000

About the Law Library of Victoria

Since the 1850s, the legal profession in Victoria has funded a library to enhance the administration of justice.

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The Library is an integral resource for the Victorian Courts and VCAT, as well as for the legal profession and the community.

The Library provides services that support the administration of justice in Victoria.

- We collate and curate the best range of legal information resources for our constituents.
- We assist with reference and research support, and improve skills in using legal resources across the community.
- We improve access to justice for all Victorians by providing access to legal resources for our members.
- Library news and events

The Library Bulletin is a free fortnightly information service provided by the Law Library of Victoria for judicial officers, members of the legal profession and anyone with an interest in the law. It is compiled by Library staff and includes the following content:

- 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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