



THE LAW LIBRARY OF VICTORIA

Library Bulletin

27 October
2017

Library News

Photography now permitted in the Supreme Court Library

Visitors are now permitted to take photographs (still images only) with hand held devices within the Supreme Court Library for personal use. Tag us on Instagram using #lawlibraryofvictoria. More information on our photography policy can be found on our website at: <https://www.lawlibrary.vic.gov.au/location-hours>.

Tour of the Supreme Court Library

Tuesday 14 November, 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

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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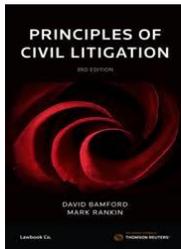
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New Books

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/.

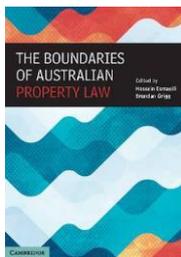
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



Bamford, David and Rankin, Mark, *Principles of civil litigation* 3rd ed., Thomson Reuters (Professional) Australia, Pyrmont N.S.W., 2017
Call number: 347.043462 DUN.8 (Supreme Court Library)

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



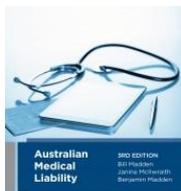
Esmaeli, Hossein and Grigg, Brendan (eds.), *The boundaries of Australian property law*
Cambridge University Press, Port Melbourne, 2016
Call number: 346.043 BOU (County Court Library)

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



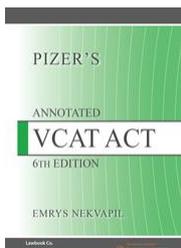
Heydon, J.D., *Cross on evidence* 11th ed., LexisNexis Butterworths, Chatswood N.S.W., 2017
Call number: 347.06 HEY.11 (County Court Library, Supreme Court Library, VCAT Library)

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



Madden, Bill, McIlwraith, Janine, Madden, Benjamin, *Australian medical liability* 3rd ed., LexisNexis Butterworths, Chatswood N.S.W., 2017
Call number: 344.041 MAD.3 (Supreme Court Library)

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



Nekvapil, Emrys, *Pizer's annotated VCAT Act* 6th ed., Thomson Reuters (Professional) Australia, Rozelle, N.S.W., 2017
Call number: 342.945066 PIZ.6 (County Court Library, Supreme Court Library, 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:

- [Commercial Passenger Vehicle Industry Amendment \(Further Reforms\) Bill 2017](#)
- [Compensation Legislation Amendment Bill 2017](#)
- [Domestic Animals Amendment \(Puppy Farms and Pet Shops\) Bill 2016](#)
- [Firearms Amendment \(Advertising\) Bill 2017](#)
- [Gambling Legislation Amendment Bill 2017](#)
- [Offshore Petroleum and Greenhouse Gas Storage Amendment Bill 2017](#)
- [Victorian Data Sharing Bill 2017](#)

Victorian Assents

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

- [Drugs, Poisons and Controlled Substances Amendment \(Real-time Prescription Monitoring\) Act 2017](#) No. 50/2017
- [Environment Protection Act 2017](#) No. 51/2017
- [Health Legislation Amendment \(Quality and Safety\) Act 2017](#) No. 52/2017
- [Parks and Crown Land Legislation Amendment Act 2017](#) No. 53/2017

Proclamations

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

- [Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017](#) No. 40/2017
 - Part 1 (sections 1-3), sections 6, 7, 19, 21-23 of this Act came into operation on 21 October 2017 (SG340 10.10.2017)
- [WorkSafe Legislation Amendment Act 2017](#) No. 48/2017
 - Sections 10-19, 21, 22, 25 of this Act came into operation on 26 October 2017 (SG359 24.10.2017)

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

- [Compensation Legislation Amendment Act 2016](#) No. 73/2016
 - Sections 11(1), 15, 19, 21 of this Act came in by forced commencement on 11 October 2017 s.2(5)

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](#)

High Court Cases

APPEAL - Supreme Court of Nauru - Where Refugees Convention Act 2012 (Nr), s43(1) confers right to "appeal" to Supreme Court against a decision by Refugee Status Review Tribunal not to recognise person as a refugee - Whether Supreme Court was exercising original jurisdiction when determining "appeal" from Tribunal - Whether appeal from Supreme Court to High Court lay as of right.

MIGRATION - Refugees - Where Refugees Convention Act 2012 (Nr), s3 adopts definition of "refugee" under Refugees Convention as modified by Refugees Protocol - Where Refugees Convention requires "well-founded fear of being persecuted" - Where Tribunal found harm appellant and family faced constituted discrimination, but not persecution - Whether Supreme Court erred in failing to hold that Tribunal applied wrong test in determining whether appellant suffered persecution - Whether Tribunal required total deprivation of appellant's human rights to find persecution.

MIGRATION - Refugees - Where Refugees Convention Act 2012 (Nr), s22(b) provides that Tribunal "must act according to the principles of natural justice and the substantial merits of the case" - Where appellant stated that Somalian authorities were unwilling to assist him and his family due to ethnicity - Where Tribunal relied on country information indicating that there are police from every tribe in Somaliland to conclude appellant would have "some redress from the acts of others" - Whether failure by Tribunal to put substance of information to appellant constituted breach of requirements of procedural fairness.

WORDS AND PHRASES - "appeal", "country information", "credible, relevant and significant", "original jurisdiction", "persecution", "procedural fairness", "well-founded fear of persecution".

BRF038 v The Republic of Nauru

[\[2017\] HCA 44](#)

18/10/2017

CONSTITUTIONAL LAW (CTH) - Implied freedom of political communication - Workplaces (Protection from Protesters) Act 2014 (Tas) - Where Act empowers police officers to direct protesters to leave and stay away from business premises and business access areas under pain of arrest and criminal penalties - Where business premises include forestry land - Where Act allows police officers to give such directions if they reasonably believe protester is preventing, hindering or obstructing business activity, has done so, or is about to do so - Where Forestry Tasmania authorised to undertake forest operations in Lapoinya Forest - Where plaintiffs protested in vicinity of forest operations - Where plaintiffs directed to leave and stay away from forestry land - Where plaintiffs arrested and charged, purportedly under Act, as result of protest activity - Whether Act restricts otherwise lawful protest activity - Whether implied freedom burdened - Whether Act, or provisions thereof, impose impermissible burden on implied freedom in their operation in respect of forestry land and related business access areas - Whether provisions suitable, necessary and adequate in balance.

CONSTITUTIONAL LAW (CTH) - Where plaintiffs charged under Workplaces (Protection from Protesters) Act 2014 (Tas) - Where charges not pursued - Where plaintiffs intend to engage in conduct unless conduct validly proscribed by Act - Whether plaintiffs have standing to challenge validity of Act.

WORDS AND PHRASES - "burden", "business access area", "discriminatory effect", "implied freedom of political communication", "proportionality testing", "protest activity", "protester", "reasonably appropriate and adapted".

Brown, Robert James v The State of Tasmania

[\[2017\] HCA 43](#)

18/10/2017

CONSTITUTIONAL LAW (CTH) - Parliamentary elections - References to Court of Disputed Returns - Where referred persons elected to Commonwealth Parliament - Where evidence to suggest each held dual citizenship at date of nomination for election - Whether each person incapable of being chosen or of sitting as senator or member of House of Representatives by reason of s 44(i) of Constitution - Proper construction of s 44(i) of Constitution - Whether s 44(i) contains implied mental element in relation to acquisition or retention of foreign citizenship - Whether each person subject or citizen of foreign power or entitled to rights or privileges of subject or citizen of foreign power for purposes of s 44(i).

WORDS AND PHRASES - "a subject or a citizen ... of a foreign power", "constitutional imperative", "foreign citizenship", "incapable of being chosen", "knowledge", "natural-born", "naturalised", "reasonable steps", "voluntariness", "voluntary act", "wilful blindness".

In the matters of questions referred to the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918 (Cth) concerning Senator The Hon Matthew Canavan, Mr Scott Ludlam, Ms Larissa Waters, Senator Malcolm Roberts, The Hon Barnaby Joyce MP, Senator The Hon Fiona Nash and Senator Nick Xenophon

[\[2017\] HCA 45](#)

27/10/2017

CRIMINAL LAW - Murder and manslaughter - Act causing death - Where appellant convicted of murder - Where death occasioned by discharge of shotgun held by appellant - Where alternative prosecution case for murder put to jury on basis that shotgun may have discharged as result of unwilled act - Whether unwilled, criminally negligent act or omission can result in conviction for murder where jury satisfied accused possessed intention to kill or inflict grievous bodily harm - Whether breach of duty to use reasonable care and to take reasonable precautions in use and management of dangerous thing can found conviction of murder.

WORDS AND PHRASES - "act causing death", "breach of duty", "criminally negligent", "intention", "intentional offence", "manslaughter", "murder", "omission", "reasonable care", "unwilled act".

Koani, Christopher Charles v The Queen

[\[2017\] HCA 42](#)

18/10/2017

Victorian Supreme Court Cases

Court of Appeal

APPEAL - Intentional tort - Assault - Defendant charged - Charge proved - Release without conviction on good behaviour bond - Common law proceeding for damages brought by injured person (plaintiff) - Psychiatric injury - Proceeding not defended at trial - Evidence of plaintiff as to extent of work engaged in since assault - Judgment for plaintiff - Later prosecution of plaintiff for obtaining accident compensation payments by deception - Proceeding by defendant to set aside damages judgment as procured by fraud - Alleged perjury of plaintiff when giving evidence of work engaged in since assault - Reliance on admissions made in later criminal prosecution - Multiple deficiencies in case pursued by defendant at trial of proceeding brought by him - Perjury not established - Leave to appeal refused - *Wentworth v Rogers (No 5)* (1986) 6 NSWLR 543 applied.

Gann, Jason William v Hosny, Joseph

Santamaria, Kaye, and Ashley JJA

[\[2017\] VSCA 303](#)

20/10/2017

CRIMINAL LAW - Appeal - Conviction - Application for extension of time to appeal - Applicant convicted of trafficking in commercial quantity of controlled drug - Refusal of extension of time by Registrar - Election to have application determined by Court of Appeal - Three year delay in filing application - Fitness to be tried - Whether real and substantial question that applicant may have been unfit at time of trial - No question of fitness arose during trial - Psychiatric and psychological assessments conducted two and a half years after trial - Explanation for delay unsatisfactory - Application refused - Criminal Procedure Act 2009 s313 - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 Part 2.

Madafferi, Francesco v The Queen

Priest, Hansen, and Coghlan JJA

[\[2017\] VSCA 302](#)

20/10/2017

CRIMINAL LAW - Appeal - Conviction - Fresh evidence - Evidence of pre-trial conversation with eyewitness - Whether doubt cast on evidence given by eyewitness - Whether significant possibility of acquittal - Leave to appeal refused.

CRIMINAL LAW - Appeal - Sentence - Reckless cause injury - Convicted after trial - Sentenced to nine months' imprisonment with 15 month community correction order - Whether manifestly excessive - Whether judge erred in taking into account serious injury caused - Leave to appeal refused.

Harrington, Bryce Desmond v The Queen

Maxwell P, Redlich JA, and Croucher AJA

[\[2017\] VSCA 307](#)

26/10/2017

CRIMINAL LAW - Appeal - Interlocutory appeal - Evidence - Admissibility - Whether improperly or illegally obtained - Customs inspection - Mobile phones carried by passenger - Whether goods 'subject to the control of the Customs' - Whether passenger's carriage of personal effects constitutes 'export'/'import' - Contents of phones copied by Customs without prior examination - Non-compliance with statute and operational instructions - Exclusion of improperly obtained evidence - Gravity of impropriety - Judge erred in concluding that phones not examinable by Customs - Evidence lawfully obtainable - Substantial probative value - Nature of offence - Appeal allowed - DPP v Marijancevic (2011) 33 VR 440 considered - Evidence Act 2008 s138 - Customs Act 1901 (Cth) s30, s68, s71, s71AAAB, s186, s186A.

Director of Public Prosecutions [DPP] (Cth) v Farmer, Jonathon (a Pseudonym); Director of Public Prosecutions [DPP] (Cth) v Larson, Ryan (a Pseudonym); Director of Public Prosecutions [DPP] (Cth) v Reese, Saul (a Pseudonym) and Director of Public Prosecutions [DPP] (Cth) v Mendez, Garry (a Pseudonym)

Maxwell P, Priest and Beach JJA

[\[2017\] VSCA 292](#)

17/10/2017

CRIMINAL LAW - Appeal - Interlocutory rulings - Pleas of not guilty - Using a carriage service to procure a person under 16 years of age for sexual activity - Using a carriage service to groom a person under 16 years of age for sexual activity - Using a carriage service to transmit indecent communications to a person under 16 years of age - Refusal to certify - Admissibility of tendency evidence - Whether mobile phone seized under common law power of seizure - Leave to appeal refused on all grounds - Criminal Procedure Act 2009 s295 - Evidence Act 2008 s97 and s101 - Field v Sullivan [1923] VLR 70 - Levine v O'Keefe [1930] VLR 70.

Reeves, Lucas (a Pseudonym) v The Queen

Santamaria JA, Kaye JA, and T Forrest AJA

[\[2017\] VSCA 291](#)

13/10/2017

CRIMINAL LAW - Appeal - Sentence - Appellant Mark Robinson convicted of aggravated burglary; possessing a firearm whilst prohibited; intentionally causing injury; possessing a drug of dependence - Six years' imprisonment - Non-parole period of four years - Cumulation orders - Whether judge erred in regarding an uncharged criminal act as aggravation - Whether appeal court satisfied that different sentences should be imposed - Whether sufficient weight given to intellectual disability - Whether offending conduct and personal circumstances properly considered - Appeal dismissed - Sentencing Act 1991 (Vic) s44 - DPP v Bowden [2016] VSCA 283 - R v Verdins (2007) 16 VR 269.

CRIMINAL LAW - Appeal - Sentence - Appellant Edward Robinson convicted of aggravated burglary; intentionally causing injury; storing firearm in an insecure manner while in possession of firearm without a licence - possess ammunition without licence (summary charge) - Five years and six months' imprisonment - Non-parole period of three years - Parity - Cumulation - Whether sentence manifestly excessive - Early guilty plea - Degree of criminality - Limited criminal history - Rehabilitative steps taken - Appeal dismissed - Sentencing Act 1991 (Vic) - DPP v Bowden [2016] VSCA 283.

Robinson, Edward v The Queen; Robinson, Mark v The Queen

Kaye JA and Beale AJA

[\[2017\] VSCA 304](#)

24/10/2017

CRIMINAL LAW - Appeal - Sentence - Crown appeals - Joint Commonwealth - State indictment - State charges of sexual penetration of child under 16 (two charges), possession of child pornography, indecent act - Commonwealth charges of using internet to groom child victims, procure for sex and send indecent images - Sentenced on State offences to 23 months' imprisonment followed by three year community correction order ('CCO') - Sentenced on Commonwealth offences to 20 months' imprisonment - Effective global sentence 23 months' imprisonment with three year CCO - Whether manifestly inadequate - Whether judge failed to order proper cumulation - Whether judge erred in applying 'serious sexual offender' provisions - Whether s6E of Sentencing Act 1991 complied with - Appeals allowed - Respondent resentenced to total effective sentence of 6 years and 6 months' imprisonment with non-parole period of 4 years and 6 months.

Director of Public Prosecutions [DPP] (Vic) and Director of Public Prosecutions [DPP] (Cth) v Swingler, Ryan Alan

Ferguson CJ, Maxwell P, and Weinberg JA

[\[2017\] VSCA 305](#)

24/10/2017

CRIMINAL LAW - Appeal against sentence - Applicant pleaded guilty to conspiracy to assault - Sentenced to 15 months' imprisonment with non-parole period of eight months - Co-offender with much greater culpability and worse criminal record sentenced to 20 months' imprisonment - Parity - Insufficient differentiation between sentences - Applicant played minimal role in conspiracy - Sentence manifestly excessive - Appeal allowed - Resentenced to four months' imprisonment.

Dice, Pinky (aka Michael Nolan) v The Queen

Weinberg JA and Priest JA

[\[2017\] VSCA 310](#)

23/10/2017

CRIMINAL LAW - Application for bail pending application for leave to appeal against sentence - Applicant pleaded guilty to offences of using a carriage service to groom a person under 16 and possessing child pornography - Sentence of 12 months' imprisonment with release, after three months, on recognizance to be of good behaviour, plus community correction order - Substantial proportion, or all, of three-month immediate prison sentence likely to be served before hearing and determination of sentence application - Respectable arguments as to error and substitution of reduced sentence - Substantial delay in prosecution of grooming offence - Director conceded immediate release on recognizance open - Very low risk of reoffending or breaching bail - Bail granted - Re Pennant [1997] 2 VR 85; Re Zoudi (2006) 14 VR 580.

Meadows, Aaron Troy v Director of Public Prosecutions [DPP] (Cth)

Croucher AJA

[\[2017\] VSCA 294](#)

08/06/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Aggravated burglary - Prohibited person in possession of firearm - Possession of unregistered handgun - Assault of police officer in execution of duty - Related summary charges - Two indictments - Sentence of 7 years and 6 months' imprisonment with non-parole period of 5 - Whether base sentence for aggravated burglary on one indictment manifestly excessive - Leave to appeal refused.

Folino, Tyson v The Queen

Santamaria JA

[\[2017\] VSCA 295](#)

19/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Aggravated burglary - Threat to kill - Sexual assault - Rape - Theft - Sentence of 10 years' imprisonment with non-parole period of 6 years and 6 months - Whether sentence manifestly excessive - Whether error in aggregating sentence - Whether judge failed to take into account principles of totality and proportionality - Whether judge considered level of family and social support in assessing rehabilitation prospects - Leave to appeal refused.

Cao, Tuan Anh v The Queen

Santamaria JA

[\[2017\] VSCA 298](#)

19/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Dangerous driving causing death - Failure to stop after accident - Three summary charges - Where vehicle driven by applicant collided with cyclist - Sentence of 7 years and 9 months' imprisonment with non-parole period of 6 years and 9 months - Whether sentence manifestly excessive - Whether non-parole period disproportionate - Leave to appeal refused.

Azzopardi, Bradley John v The Queen

Santamaria JA

[\[2017\] VSCA 299](#)

19/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Theft - Attempted burglary - Burglary - Attempted theft - Armed robbery - Reckless conduct endangering persons - Dangerous or negligent driving while pursued by police - Possessing drug of dependence - Two summary charges - Sentence of 7 years and 4 months' imprisonment with non-parole period of 4 years and 6 months - Role of applicant in armed robbery - Whether sentence manifestly excessive - Leave to appeal refused.

Jeitany, Michael v The Queen

Santamaria JA

[\[2017\] VSCA 296](#)

19/10/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Trafficking in drug of dependence in not less than large commercial quantity - Sentence of 15 years' imprisonment with non-parole period of 11 years and 6 months - Applicant obtained possession of 250 kilograms of faux cocaine - Covert police operation - Role of applicant in offending - Seriousness of offending - Whether context of police operation a mitigating factor - Whether sentence manifestly excessive - Drugs, Poisons and Controlled Substances Act 1981 s71 - Leave to appeal refused.

Pham, Anthony v The Queen

Santamaria JA

[\[2017\] VSCA 297](#)

19/10/2017

CRIMINAL LAW - Sentence - Appeal - Cultivating a narcotic plant (cannabis) and theft of electricity - Aggregate sentence of 9 months' imprisonment with community correction order of 18 months' duration - Whether sentence manifestly excessive - Prior conviction for cultivation of a narcotic plant - Specific deterrence - Leave to appeal refused.

Quaresima, Damian v The Queen

Weinberg and Priest JA

[\[2017\] VSCA 306](#)

23/10/2017

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Rape - Sentence of 6 years' imprisonment with non-parole period of 4 years - Manifest excess - Whether sentence was manifestly excessive - Applicant in position of authority over victim - Comparable cases - Relevance of comparable cases - Whether sentence wholly outside permissible range - Not reasonably arguable that sentence imposed manifestly excessive - Application for leave to appeal refused.

Kalofolias, Perry v The Queen

Maxwell P, Beach and McLeish JJA

[\[2017\] VSCA 308](#)

26/10/2017

NEGLIGENCE - Duty of care - Breach of employer's duty of care - Breach of occupier's duty of care - Employee injured when preparing to climb fence to gain access to work premises - Concealed pit at base of fence - Whether trial judge correctly identified the relevant risk of injury - Whether trial judge provided sufficient analysis of content of duty of care - Whether breach determined prospectively by trial judge - No error - Appeal dismissed - Wrongs Act 1958 s14B - *Wyong Shire Council v Shirt* (1980) 146 CLR 40.

APPEAL - Whether findings of fact should be disturbed on appeal - Where findings based on inference as distinct from findings of primary fact - Relationship between finding of primary fact and drawing of conclusion or inference - No error.

Southern Colour (Vic) P/L v Parr, Michael and Knight Frank (Vic) P/L

Santamaria JA, Kaye JA, and Ashley JA

[\[2017\] VSCA 301](#)

20/10/2017

PRACTICE AND PROCEDURE - Application for leave to appeal against a discretionary interlocutory order of County Court - Applicable principles.

PRACTICE AND PROCEDURE - Security for costs - Impecunious corporate plaintiff - Defendants sought security in the amount of \$48,617.28 - Plaintiff's counsel conceded that security in the amount of \$13,000 would be reasonable - Judge ordered security in the amount of \$10,580 based on judge's own calculations - Judge's discretion to fix quantum of security miscarried - Appeal allowed.

PRACTICE AND PROCEDURE - Security for costs - Form of security - Observations on undesirability of security in the form of a personal undertaking.

PRACTICE AND PROCEDURE - Order for costs - Judge ordered defendants to pay plaintiff's costs of security for costs application even though defendants succeeded - Judge's discretion to award costs miscarried.

PRACTICE AND PROCEDURE - Civil Procedure Act 2010 - Overarching obligations to cooperate, use reasonable endeavours to resolve dispute and ensure costs are reasonable and proportionate - Whether parties' conduct inconsistent with overarching obligations.

Trailer Trash Franchise Systems P/L and Dale Cooney v GM Fascia & Gutter P/L

Tate and Kyrou JJA

[\[2017\] VSCA 293](#)

18/10/2017

PRACTICE AND PROCEDURE - Application for stay of execution of orders pending application for leave to appeal - Where orders relate to division of proceeds of sale of farm operated as partnership - Whether prospect that appeal may be rendered nugatory - Where applicant alleged that respondent impecunious and real risk of proceeds of judgment being dissipated partly by gambling - Application dismissed.

Uren, Bruce Norman v Uren, Noel Murray

Santamaria and Ashley JJA

[\[2017\] VSCA 300](#)

19/10/2017

Commercial Court

BUILDING AND CONSTRUCTION - Application for certiorari by the principal under a building contract - Determination by an adjudicator in favour of builder under an adjudication under the Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether 'show cause' validly given to builder - Whether s48 of the Building and Construction Security of Payment Act 2002 (Vic) rendered void a clause entitling the principal to take over the balance of the works and to suspend builder's entitlement to payment under the contract - Section 48 of the Building and Construction Industry Security of Payment Act 2002 (Vic) not enlivened - Southern Han Breakfast Points Pty Ltd v Lewence Constructions Pty Ltd [2016] HCA 52 applied - Whether show cause notice validly specified the date and time in which the builder was to show cause - Application granted.

Westbourne Grammar School v Gemcan Constructions P/L & Ors

Robson J

[\[2017\] VSC 645](#)

26/10/2017

CONTRACT - Construction of lease provisions - Construction of lease repair covenant - Renewal of lease pursuant to option to renew - Creation of new lease upon exercise of option to renew - Terms incorporated from original lease - Effect of deed of renewal - Date of commencement of lease - 'Fair wear and tear' exception in lease - Obligation to 'keep and maintain' - Obligation to effect repairs 'as necessary' - 'Good and tenable repair' - 'Good and efficient working order' - Relief against forfeiture - Damages.

Caltex Australia Petroleum P/L (ACN 000 032 128) v Agtan P/L (ACN 007 410 077)

Digby J

[\[2017\] VSC 593](#)

03/10/2017

CONTRACT - Duress - What constitutes unacceptable pressure to procure entry into contract - Informed borrowers in financial distress seeking urgent refinance - Extrinsic deadlines and pressure on borrowers - Apparent absence of bad faith by willing broker and lender - Acceptance of offer of finance on terms obliging payment of fees and charges if acceptance withdrawn - Borrower's inability to give the required security - Borrower withdraws acceptance of loan offer withdrawn and loan cancelled - Contractual obligation to pay fees and expenses - Whether contract procured by duress or unsupported by consideration.

CONTRACT - Consideration - Contract with finance broker to procure a loan - Fee payable according to loan amount - Offer of loan obtained on certain conditions and security - Fees payable to lender to establish loan - Offeree obliged to pay liquidated damages and fees and costs if acceptance of loan is withdrawn - Inadequate security - Loan unattainable and not advanced - Claim by broker and lender for fees - Whether obligation to pay fees and costs is supported by consideration.

CONTRACT - Penalties in contract - Offer of finance - Establishment fee payable - Fees and costs payable by borrower for grant of loan - Obligation to pay 'Liquidated Damages' if borrower withdraws or revokes acceptance of loan - 'Liquidated damages' included fees and costs payable for grant of loan - Whether law of penalties applies.

In the matter of an application for payment out of funds in Court held by the Senior Master, which were paid into Court by Ringersma Investments P/L pursuant to s69 of the Trustee Act 1958 and s77 of the Transfer of Land Act 1958. Between: Giasoumi, Nicholas (in his capacity as trustee of the bankrupt estate of Paul Ribbera) v Ribbera, Cathy; Prime Capital Securities P/L and Lightspeed Finance P/L

Mukhtar AsJ

[\[2017\] VSC 631](#)

16/10/2017

CORPORATIONS - Application to extend time for registration of security interest - Corporations Act 2001 (Cth) s588FL, s588FM - Notice - Discretionary considerations.

In the matter of Amotran P/L (ACN 084 411 281) in its own capacity and as trustee for the Tsetis Family Trust (ABN 68 480 520 745). Bendigo and Adelaide Bank Limited (ACN 068 049 178)

Judd J

[\[2017\] VSC 637](#)

18/10/2017

CORPORATIONS - Corporations Act 2001 (Cth) - Proceeding commenced in the name of a deregistered company as plaintiff - Judgment given against the plaintiff - Whether proceeding a nullity - Reinstatement - Corporations Act 2001 (Cth), s601AH(2)(a) - Applicant the defendant in the proceeding - Whether the applicant a 'person aggrieved' - Corporations Act 2001 (Cth), s601AH(2)(b) - Whether 'just' that company's registration be reinstated - Leave to an intervener to appear and make submissions - Corporations Act 2001 (Cth), s601AH(5) - Whether the proceeding is rehabilitated upon reinstatement - Whether order futile - In the absence of a determination of futility, not appropriate to delve into the merits of the rights of the applicant.

In the matter of Pt Cook Community Entertainment Facility P/L. Geelong Football Club Ltd (ACN 005 150 818) v Australian Securities and Investments Commission

Randall AsJ

[\[2017\] VSC 633](#)

13/10/2017

PRACTICE AND PROCEDURE - Appointment of special referee - Questions as to discovery of documents and inspection of documents in a large document case referred to special referee - Reference conducted as a facilitation process rather than an adversarial process - Adoption of special referee's report - Special referee's report adopted in part - Further questions put to the special referee to give his opinion and report thereon - O 50 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Validation process in TAR considered.

PRACTICE AND PROCEDURE - Discovery in a large document case - Use of predictive coding technology - Technology Assisted Review ('TAR') - Orders for TAR made in accordance with the recommendations of the special referee following a facilitation process conducted with the parties in a reference under O 50 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Special referee's report adopted in part - Further questions put to the special referee to give his opinion and report thereon - Validation process in TAR considered.

McConnell Dowell Constructors (Aust) P/L (ACN: 002 929 017) v Santam Ltd (Registration Number 1918/001680/06)

Vickery J

[\[2017\] VSC 640](#)

22/09/2017

PRACTICE AND PROCEDURE - Interlocutory injunction - Sale of land by public auction - Registered proprietors insolvent and under administration - Land intended to be developed - Developer purchased land with notice of prior interest - Settlement not due to occur until end of month - Developer obtained planning permit - Proposed subdivision still unregistered - Developer entered into sale contracts for proposed subdivided lots - Alleged wrongful interference with sale contracts - Alleged unjust enrichment - Serious question to be tried - Balance of convenience - Delay - Application dismissed.

Panorama Investments P/L v Mellos, Nick and Dixon, Stephen Robert (as joint and several trustees of the bankrupt estate of Dr Nicholas William Sevdalis (a bankrupt)) & Ors (No 2)

Elliott J

[\[2017\] VSC 639](#)

13/10/2017

PRACTICE AND PROCEDURE - Subpoena - Objection to inspection of documents by reason they are protected by client legal privilege - Whether inspection should be permitted by reason that subject documents 'affect a right of a person' within the meaning of s121(3) of the Evidence Act 2008 (Vic).

PRACTICE AND PROCEDURE - Discovery - Documents - Application for further discovery of communications between solicitor and clients after contract is alleged to have been concluded - applicant contended post contractual conduct was relevant in determining whether contract existed and whether terms should be implied into contract - Application refused.

PRACTICE AND PROCEDURE - Discovery - Documents - Party had pleaded that he 'was ready willing and able to perform agreement' - Application for discovery of all documents relevant to party's ability to perform obligations under agreement - Party's ability to perform obligations under the alleged sale agreement was a real issue in dispute and documents sought were discoverable.

Cahill, Peter Joseph v Kiversun P/L; Molonglo Group (Australia) P/L (ACN 109 342 547) v Cahill, Peter Joseph; Registrar of Titles. And between: Cahill, Peter Joseph v Molonglo Group (Australia) P/L (ACN 109 342 547)

Gardiner AsJ

[\[2017\] VSC 628](#)

12/10/2017

TAXATION - Land tax - Application for refund of all or part of the amounts of land tax paid - Commissioner of State Revenue (Vic) v ACN 005 057 349 Pty Ltd (2017) 91 ALJR 349 - Taxation Administration Act 1997 s18, s19, s20.

North West Melbourne Recycling P/L (ACN 087 766 514) v Commissioner of State Revenue
Croft J

[\[2017\] VSC 647](#)

27/10/2017

Common Law Division

ADMINISTRATIVE LAW - Judicial review - Medical Panel - Part VBA of the Wrongs Act 1958 (Vic) - Availability of 'illogical or irrational' ground of review - Alleged misapplication of the AMA Guides to the Evaluation of Permanent Impairment ('Guides') - Admissibility of expert evidence not before the Medical Panel.

O'Brien, Nicholas Josef v Brand, Dr Caroline; Bartlett, Dr John; Field, Mr Peter; Corlett, Mr Russell constituting the medical panel pursuant to the Wrongs Act 1958 (Vic) and Robbins, Scott Geoffrey

Daly AsJ

[\[2017\] VSC 596](#)

20/10/2017

ADMINISTRATIVE LAW - Judicial review - Opinion of a medical panel - Assessment of degree of permanent psychiatric impairment - Unrelated injuries or causes - Whether jurisdictional error - Whether statement of reasons sufficient - Application dismissed - H J Heinz Company Australia Pty Ltd v Kotzman (2009) 31 VAR 206; Alcoa Holdings Ltd v Lowthian [2011] VSC 245; Wingfoot Australia Partners Pty Ltd v Kocak (2013) 22 CLR 480 considered - Accident Compensation Act 1985 s91, s98C.

Kipniak, Chip & Associates P/L v Rann, Angela Louise & Ors

Zammit J

[\[2017\] VSC 651](#)

25/10/2017

ADMINISTRATIVE LAW - Natural justice - Human right to fair hearing - Litigants in person - Appeal from orders of Magistrates' Court of Victoria convicting and fining appellant for committing summary road safety offences - Application for judicial review of orders of County Court of Victoria convicting and discharging applicant for committing summary road safety offences - Magistrate summarily dismissed appellant's objections to jurisdiction, ordered that he be removed from courtroom due to misbehaviour and heard and determined proceeding in his absence - Judge ordered applicant to be taken into custody for contempt of court and placed in dock and then conducted highly conflictual hearing in which applicant was personally denigrated - Whether magistrate breached rules of natural justice and human right to fair hearing by failing to provide due assistance to appellant as litigant in person - Whether judge breached those rules in same way as regards applicant as litigant in person - Whether fair-minded observer would reasonably conclude that judge might not impartially hear and determine criminal charges - Powers of courts to order removal of litigants whose behaviour makes continuation of proceedings impossible - Powers of courts to order that parties to proceedings be taken into custody for ensuring safety and security of court - Criminal Procedure Act 2009 (Vic) s272(1), Supreme Court (General Civil Procedure) Rules 2015 (Vic) O56, Charter of Human Rights and Responsibilities Act 2006 (Vic) s24(1).

Harkness, Zenaan v Roberts, Paul; Magistrate Stuthridge and Magistrates' Court of Victoria; Kyriazis, Vasilios v County Court of Victoria and Doughty-Cowell, Rhys

Bell J

[\[2017\] VSC 646](#)

26/10/2017

APPEAL - Appeal from decision of Judicial Registrar - Professional negligence claim - Whether order for security for costs appropriate and in what amount - Supreme Court (General Civil Procedure) Rules 2015 (Vic), Order 62 - Appeal dismissed.

Bodycorp Repairers P/L v GDG Legal P/L and DSG Legal P/L

J Forrest J

[\[2017\] VSC 621](#)

25/10/2017

APPEAL - Appeal of order of the Magistrates' Court - Negligence - Whether the appellant failed to mitigate his loss - Whether the appellant had legal title to make a claim on an insurance policy taken out by his mother - Appeal allowed.

Rosano, Anthony v Karalis, Heleni

Bongiorno JA

[\[2017\] VSC 472](#)

18/08/2017

COSTS - Application for modification of restrictive covenant - Application granted - Whether the plaintiff should pay a defendant's costs even when successful - Whether defendant made frivolous objections to the application - Property Law Act 1958, s84 - Re Withers [1970] VR 319; Re Ulman (1985) VConVR 54-178; Stanhill Pty Ltd v Jackson [2005] VSC 355; Walker v Bridgewood (No 2) [2006] NSWSC 284 and Mamfredas Investment Group Pty Ltd v PropertyIT and Consulting Pty Limited & Ors [2013] NSWSC 929.

In the matter of an Application pursuant to s84 of the Property Law Act 1958 for the modification of a restrictive covenant. Jiang, Pei Yao v Monaygon P/L (ACN 005 621 161)

Derham AsJ

[\[2017\] VSC 655](#)

27/10/2017

COSTS - Costs of appeal under s3.6.23 of the Legal Profession Act 2004 (Vic) - Costs of a claim exercising rights of subrogation under s3.6.19 of the Legal Profession Act 2004 (Vic) brought as third party proceedings in an appeal - Oxenbould v The Solicitors' Trust (No 2) [2011] TASSC 63; The Solicitors' Trust v Oxenbould [2013] TASFC 2; Oshlack v Richmond River Council [1998] 193 CLR 72.

De Simone, Giuseppe; De Simone, Serafino; De Simone Nominees P/L (ACN 006 463 421); Seachange Management P/L (ACN 091 443 211); Seachange Project Nominees P/L (ACN 149 258 033) and Seachange Village Nominees P/L (ACN 091 526 215) v Legal Services Board; Brereton, Michael Richard and McLeod, David (Costs)

Macaulay J

[\[2017\] VSC 644](#)

20/10/2017

JUDICIAL REVIEW - County Court jurisdictional ruling on appeal from Children's Court care by Secretary order made by Children's Court - Whether County Court made a judicially reviewable error - Nature of appeal - Setting aside of Children's Court order when appellant had ceased to be a child - Whether County Court could make a care by Secretary order in determining appeal - Children, Youth and Families Act 2005 s3, s289, s328, s426. APPEALS - Children's Court care by Secretary order - Appeal to County Court - Powers of County Court in determining appeal - Children, Youth and Families Act 2005 s328, s426.

S M v County Court of Victoria; Secretary to the Department of Health and Human Services; D M and R M

Ginnane J

[\[2017\] VSC 604](#)

05/10/2017

JUDICIAL REVIEW AND APPEAL - Natural justice - Self-represented parties before the Tribunal - Breach of contract claim - Tribunal concluded that the defendant accepted the plaintiffs' repudiation of the contract - Sufficient opportunities given to the parties to put their cases - Procedural fairness afforded to the parties.

JUDICIAL REVIEW AND APPEAL - Claims under Domestic Buildings Contract Act 1995 - Defects in works - Whether the member is obliged to make findings as to defects as pleaded by the plaintiffs - Failure to make relevant findings - Error of law - Appeal allowed.

Kapadia, Kamalesh and Kapadia, Rajvee v Porto, Adrian t/as AP Concreting and Landscaping (ABN 84 539 905 373)

Ierodionou AsJ

[\[2017\] VSC 615](#)

27/10/2017

LEASES AND TENANCIES - Whether document styled 'heads of agreement' was in the circumstances an immediately enforceable agreement for lease - *Masters v Cameron* (1954) 91 CLR 353 - *Verrocchi v Messinis* [2016] VSC 490.

PRACTICE AND PROCEDURE - Victorian Civil and Administrative Tribunal - Appeal against Tribunal orders - Victorian Civil and Administrative Tribunal Act 1998 s148(1).

Casdar P/L v Fanous, Joseph

Croft J

[\[2017\] VSC 616](#)

20/10/2017

PRACTICE AND PROCEDURE - Application to audio-record judicial review proceeding by self-represented party - Whether express written permission should be granted - Open statutory discretion to give such permission - Relevant considerations - Ensuring court security - Principles of open justice and free communication of information - Human right to freedom of information including to seek, receive and impart information and ideas of all kinds - Ensuring proper administration of justice - Court Security Act 1980 (Vic) s4A(4)(a), Charter of Human Rights and Responsibilities Act 2006 (Vic) s15(2).

Kyriazis, Vasilios v County Court of Victoria and Doughty-Cowell, Rhys

Bell J

[\[2017\] VSC 636](#)

26/10/2017

PRACTICE AND PROCEDURE - Mode of trial - Trial by jury or judge alone - Supreme Court (General Civil Procedure) Rules 2015 r47.02 - Claim in negligence - Deceased worked on farm in Wemen in Victoria - Tractor allegedly rolled on deceased - Plaintiff deceased's wife - Duty of care question arising from employment - Duty issue surrounding consumption of alcohol - Complexity of fact and legal issues - Potential for novel duty of care - Order directing trial without jury.

Puleio, Sandra v Olam Orchards Australia P/L

Zammit J

[\[2017\] VSC 658](#)

27/10/2017

PRACTICE AND PROCEDURE - Pleadings - Application to further amend pleadings - Church - Incorporated Association - Dispute as to membership - Pleadings as to membership - Estoppel pleading - Defects in pleading - Multiple opportunities to rectify pleading - Whether further pleading opportunity should be given - Discretion - Relevant factors - Delay and prejudice - Determination of real issues - Civil Procedure Act 2010 s7, Supreme Court (General Civil Procedure) Rules 2015 O 13 r2.

ASSOCIATIONS - Church - Dispute as to membership - Membership rule - Pleadings.

Moala, Christine & Ors (According to the Schedule attached) v Free Wesleyan Church of Tonga in Australia (Victoria) Reg No A0022699W

Ginnane J

[\[2017\] VSC 635](#)

17/10/2017

PRACTICE AND PROCEDURE - Settlement of a group proceeding approved but quantum of legal costs referred to an Associate Justice - Quantum of legal costs - Supreme Court Act 1986 (Vic) Part 4A, s33ZF and s33ZJ - Williams v AusNet Electricity Services Pty Ltd [2017] VSC 474.

COSTS - Relationship between r63.34(3) and r63.48 of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Class action legal costs - What is fair and reasonable in the circumstances - Williams v AusNet Electricity Services (Ruling No 3) [2017] VSC 528.

Williams, Steven Elliot v AusNet Electricity Services P/L (ACN 064 651 118); Hume City Council; Active Tree Services P/L (ACN 002 919 299); Homewood Consulting P/L (ACN 113 595 430). And Between: AusNet Electricity Services P/L (ACN 064 651 118) v Williams, Steven Elliot; Hume City Council; Active Tree Services P/L (ACN 002 919 299) and Homewood Consulting P/L (ACN 113 595 430) (Ruling No 4)

J Forrest J

[\[2017\] VSC 619](#)

18/10/2017

Criminal Division

CRIMINAL LAW - Manslaughter - Sentence - Death caused by impact of head of victim on ground after infliction of single punch - Offence involved consumption of drugs and alcohol - Genuine remorse - Early plea of guilty - Very good prospects of rehabilitation - Sentenced to 8 years' imprisonment with non-parole period set of 5 years.

The Queen v Vincec, Richard

Riordan J

[\[2017\] VSC 602](#)

19/10/2017

Practice Court

REAL PROPERTY - Contract of sale - Notice from Registrar of Titles - Operation of Section 90(1) and 90(2) of the Transfer of Land Act - Failure to commence proceedings to maintain caveat.

PRACTICE AND PROCEDURE - Application seeking a declaration that the defendant's caveat in respect of the subject property has lapsed - Whether caveat has lapsed by operation of Section 90(1) of the Transfer of Land Act - Whether sufficient proprietary interest exists to support suspension of the plaintiff's Transfer of Land - Existence of a serious question to be tried - Weakly asserted proprietary interest - Balance of prejudice - Orders seeking that the Registrar of Titles remove Notice of Action and register the plaintiff's Transfer of Land.

Tawafi, Mervais v Weil, Asunta and Registrar of Titles

Digby J

[\[2017\] VSC 643](#)

21/08/2017

County Court of Victoria Cases

Following is a selection of cases recently handed down in the County Court of Victoria. These cases have been selected for inclusion by the presiding judge. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction.

Murray & Anor v Wylie & Ors

[\[2017\] VCC 1520](#)

Judge Cosgrave

23/10/2017

CONTRACT - Plaintiff purchased 50% of shares in a company operating a franchise business - Document signed by parties - Subsequent document signed by parties over 2 years later - Second document stated to be “executed as a deed” - Whether second document binding as a deed without consideration - *Nom de Plume Nominees Pty Ltd v Fingal Developments Pty Ltd* [2016] VSCA 159 and *Atco Controls Pty Ltd v Newtronics Pty Ltd* [2009] VSCA 238 applied.

Wang v Liu & Anor

[\[2017\] VCC 1480](#)

Judge Anderson

17/10/2017

DAMAGES - Assessment of damages on default judgment - Office holder’s failure to account for private expenses and use of cash funds of Association.

The Victorian Multiethnic Slavic Welfare Association Inc (in liq) & Anor v Trajkov & Anor

[\[2017\] VCC 1433](#)

Judicial Registrar Tran

9/10/2017

SUPERANNUATION - Claim for lump sum payment for Total and Permanent Disability - Whether decision to refuse the plaintiff’s claim was unreasonable.

Service v Post Super Pty Ltd (ACN 064 225 841) (as Trustee of the Australia Post Superannuation Scheme) & Anor

[\[2017\] VCC 1500](#)

Judge Lacava

19/10/2017

Magistrates' Court of Victoria Cases

Following is a selection of cases recently handed down in the Magistrates' Court of Victoria. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction.

WORKERS COMPENSATION - Accepted left shoulder injury claim - Return to work - Whether primary psychiatric injury after return to work - Alleged failure to make reasonable efforts to return to work in suitable employment - Effect of termination of employment for misconduct - Jurisdiction to consider other grounds for termination of weekly payments without formal notice - Workplace injury rehabilitation and Compensation Act 2013 s104, s105, s114, s163, s185(1)(d) and s264(2).

Vassallo v Intermotor Sales

[\[2017\] VMC 16](#)

Magistrate B R Wright

13/09/2017

CRIMINAL - Section 53 Road Safety Act 1986 - Request by police of Accused for PBT - Whether accused's statement that she wanted to hold PBT device herself amounts to a refusal within the meaning of section 49(1)(c) of the Road Safety Act 1986.

Victoria Police v Santucci

[\[2017\] VMC 17](#)

Magistrate M MacCallum

16/10/2017

CRIMINAL - Legal basis for Cardinia Shire Council's power to administer and enforce laws - Legal basis of local government - Constitution Act 1901 (Cth), Constitution Act 1975 (Vic), Local Government Act 1989 (Vic) - Jurisdiction of the Magistrates' Court to hear and determine summary criminal matters, sections 4, 7, 25 Magistrates' Court Act 1989 - Apprehension of bias - Kuek v Phillips [2017] VSC 332; Johnson v Johnson (2000) 201 CLR 488.

Cardinia Shire Council v Kraan

[\[2017\] VMC 18](#)

Magistrate M MacCallum

13/07/2017

Articles

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

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

Corporations Law

Historical analysis - UK - Early colonial company law - Corporations Act 2001 (Cth) - Regulation - Constitution - Australia
Watson, K. A. "The historical development of corporate law in Australia: politics and possibilities." (2017) 32(2) *Aust Jnl of Corp Law* 122-141.

Securities law - Litigation - Class actions - Public interest - Comparative analysis - USA - Australia
Duffy, M. "Australian private securities class actions and public interest: assessing the 'private Attorney-General' by reference to the rationales of public enforcement." (2017) 32(2) *Aust Jnl of Corp Law* 162-193.

White collar crime - Financial offences - Corporate defendants - Fraud - Global financial crisis - Comparative analysis - UK - Australia - NZ
Sizer, L. "Deferred prosecution agreements." [2017] (September) *NZLJ* 277-280.

Courts

Court of Appeal - Separation of powers - Role of judges - Ministers - Contempt of court - Public interest - Victoria
Pelly, M. "Playing politics with the politicians." (2017) 91(9) *ALJ* 721-724.

Sentencing - Judges - Therapeutic jurisprudence - Non-adversarial justice - Empirical study - Research analysis - Australia
Tutton, J. "Therapeutic jurisprudence in sentencing remarks: an exploratory study." (2017) 42(2) *Alt L J* 162-165.

Criminal Law & Procedure

Evidence - Criminal appeals - Factual errors - Factual innocence - Miscarriages of justice - Juries - Australia
Roberts, S. "Fresh evidence and factual innocence in the Criminal Division of the Court of Appeal." (2017) 81(4) *JCL* 303-327.

Evidence - Tendency and coincidence evidence - Propensity - *Velkoski v The Queen* - Uniform Evidence Act - Comparative analysis - Australia
Justice Priest. "Developments in tendency evidence." (2017) 91(9) *ALJ* 715-718.

Extended sentences - Open justice - Reasons - Written sentencing remarks - Orally - UK
Harris, L. "*R. v Billington (Jason Leon)*." [2017] (10) *Crim L R* 816-817.

Joint enterprise - Liability of secondary parties - *Miller v The Queen* - *Smith v The Queen* - *Presley v The Director of Public Prosecutions* - Australia
Laws, A. "Extended joint criminal enterprise in Australia." (2017) 81(4) *JCL* 267-270.

Jurors - Jury trials - Evidence - Verdict - Research study - UK
Gannage-Stewart, H. "Half of jurors in rape cases reach guilty verdict before deliberation." (2017) 161(35) *Sol J* 11.

Misconduct - Public office - Sexual offences - Sexual Offences Act 2003 (Cth) - Law reform proposals - Australia
Sjolin, C. and H. Edwards. "When misconduct in public office is really a sexual offence." (2017) 81(4) *JCL* 292-302.

Presumption of innocence - Institutional integrity - Due process - Drug offences - Reverse onus of proof - Criminal Code 1995 (Cth), s305.3 - Constitution (Cth) - Comparative analysis - UK - Canada - Australia

Gray, A. "Presumption of innocence in peril." (2017) 42(2) Alt L J 96-101.

Recklessness - Involuntary manslaughter - Gross negligence - Unlawful act - Sentencing - R v Lidar - Criminal Justice Act 1967 (UK), s8 - UK

Stark, F. "Reckless manslaughter." [2017] (10) Crim L R 763-784.

Reform - Network - Criminal Law Reform Now Network - Criminalisation - Australia
Child, J. and J. Rogers. "Criminal Law Reform Now: a new reform network." (2017) 81(4) JCL 281-291.

Employment Law

Human rights - Labour law - Government - Collective bargaining - Public servants - Comparative analysis - Canada - Australia - Victoria

Nyland, M. Implications of the Victorian Charter of Human Rights and Responsibilities for subject matter limits on public sector collective bargaining." (2017) 30(2) AJLL 87-112.

Evidence

Hearsay evidence - Grievous bodily harm - Acids - Admissibility - Text messaging - Criminal Justice Act 2003 (UK), s114, s115 - UK

McKeown, P. and D. Hargreaves. "R. v Midmore (Billy Nathan)." [2017] (10) Crim L R 793-798.

Media Law

Disclosure - Communication - Facebook - Twitter - LinkedIn - Instagram - Risks - Challenges - Opportunities - Sensitive information - Financial reporting - Misleading and deceptive conduct - Law reform proposals - Australia

Chapple, L. et al. "A review of corporate practice of reporting on social media." (2017) 32(2) Aust Jnl of Corp Law 222-240.

Medical Law

Mental illness - Involuntary treatment - Compulsory treatment - Capacity - Disabilities - Human rights - Mental Health Act 2014 (Vic) - Law reform proposals - Victoria

Maylea, C. and A. Hirsch. "The right to refuse: the Victorian Mental Health Act 2014 and the Convention on the Rights of the Persons with Disabilities." (2017) 42 (2) Alt L J 149-155.

Practice & Procedure

Judgments - Court reporting - Law reports - Precedents - Technology - Justis - UK

Gerami, M. "Unreported but not unimportant." (2017) 161(35) Sol J 14.

Succession

Wills - Family conflict - Challenge - Courts - Unger v Sanchez - Wadsley v Sutherland - Story v Seemans - Law reform proposals - Australia

Gray, A. "Family provision applications: a critique." (2017) 91(9) ALJ 750-768.

Trusts

Creditor - Debt - Trustee - Subrogation -
Judicial developments - Marginson v
Potter - Countryside v Bayside Brunswick -
Ron Kingham Real Estate v Elgar - Belgar v
Mahaffey - Australia

**Terzic, A. "Subrogation to the trustee's
personal right of contempt." (2017)
91(9) ALJ 736-749.**

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