



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
10 November
2017

Library News

Switch On... Back to basics legal research
Tuesday 21 November, 1:15pm - 1:45pm

The Law Library of Victoria invites you to participate in our Switch On ... information sessions. These twenty-five minute sessions are suited to judicial officers, court staff, legal professionals, law students, and anyone with an interest in law.

The November session presents an overview on how to identify authoritative resources for case law and legislation. This session will: demonstrate how to identify court authorities when looking at parallel citations; provide an understanding of abbreviations; instruct on how to locate report series using abbreviations; and highlight authoritative websites for legislation. Learn what the best free resources are and the resources that are available through the library's collection.

Tour of the Supreme Court Library for legal professionals
Tuesday 28 November, 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. Due to the instructional nature of the tour (identifying resources and explaining how and when to use them), participants are eligible to claim CPD points on completion of the tour.

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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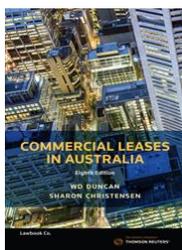
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New Books

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/.

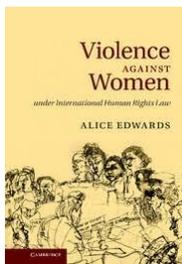
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



Duncan, W.D. and Christensen, Sharon, *Commercial leases in Australia* 8th ed., Thomson Reuters (Professional) Australia, Pyrmont N.S.W., 2017
Call number: 347.043462 DUN.8 (Supreme Court Library, VCAT Library)

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



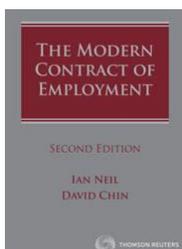
Edwards, Alice, *Violence against women under international human rights law* Cambridge University Press, Cambridge, 2013
Call number: 362.83 EDW (Supreme Court Library)

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



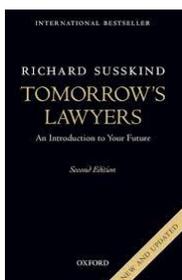
George, Patrick Thomas, *Defamation law in Australia* 3rd ed., LexisNexis Butterworths, Chatswood N.S.W., 2017
Call number: 346.034 GEO.3 (Supreme Court Library)

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



Neil, Ian and Chin, David, *The modern contract of employment* 2nd ed., Thomson Reuters, Pyrmont N.S.W., 2017
Call number: 344.01 NEI.2 (Supreme Court Library)

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



Susskind, Richard E., *Tomorrow's lawyers: an introduction to your future* 2nd ed., Oxford University Press, Oxford, 2017
Call number: 340.023 SUS.2 (Supreme Court 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:

- [Crimes Legislation Amendment \(Protection of Emergency Workers and Others\) Bill 2017](#)
- [Drugs, Poisons and Controlled Substances Amendment \(Medically Supervised Injecting Centre\) Bill 2017](#)
- [Service Victoria Bill 2017](#)
- [State Taxation Acts Further Amendment Bill 2017](#)
- [Transport Legislation Amendment \(Road Safety, Rail and Other Matters\) Bill 2017](#)
- [Water and Catchment Legislation Amendment Bill 2017](#)

Victorian Assents

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

- [Justice Legislation Amendment \(Body-worn Cameras and Other Matters\) Act 2017](#) No. 54/2017
- [Ports and Marine Legislation Amendment Act 2017](#) No. 55/2017
- [Renewable Energy \(Jobs and Investment\) Act 2017](#) No. 56/2017
- [Serious Sex Offenders \(Detention and Supervision\) Amendment \(Governance\) Act 2017](#) No. 57/2017

EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

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

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

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

Proclamations

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

- *Commercial Passenger Vehicle Industry Act 2017* No. 35/2017
 - Part 3 Division 2 (sections 35-50) of this Act came into operation on 2 November 2017 (SG351 17.10.2017)
- *Corrections Legislation Miscellaneous Amendment Act 2017* No.31/2017
 - Sections 23, 39, 41, 43(3), 46, 48-60 of this Act came into operation on 1 November 2017 (SG367 31.10.2017)
- *Owner Drivers and Forestry Contractors Amendment Act 2017* No. 46/2017
 - Sections 1-6 of this Act came into operation on 1 November 2017 (SG359 24.10.2017)

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

- *Administration and Probate and Other Acts Amendment (Succession and Related Matters) Act 2017* No. 41/2017
 - Sections 1-31 of this Act came in by forced commencement on 1 November 2017 s.2(2)
- *Climate Change Act 2017* No. 5/2017
 - Sections 1-102 of this Act came in by forced commencement on 1 November 2017 s.2(2)
- *Consumer Acts Amendment Act 2017* No. 13/2017
 - Sections 5-15, 18 of this Act came in by forced commencement on 1 November 2017 s.2(3)
- *Drugs, Poisons and Controlled Substances Miscellaneous Amendment Act 2017* No. 40/2017
 - Sections 4, 5, 8-18, 20, 24-26 of this Act came in by forced commencement on 1 November 2017 s.2(2)
- *Heritage Act 2017* No. 7/2017
 - Sections 1-309 of this Act came in by forced commencement on 1 November 2017 s.2(2)

High Court Cases

CRIMINAL LAW - Appeal - Supreme Court of Nauru - Appeals Act 1972 (Nr) - Where Act entitles Director of Public Prosecutions to bring appeal against sentence - Where Act gives Supreme Court discretion on appeal to substitute own sentence for sentence of District Court - Where Supreme Court substituted own sentences for sentences of District Court without identifying error by District Court - Where sentences substituted by Supreme Court significantly higher than sentences passed by District Court - Where Supreme Court wrongly concluded it was not required to find error affecting District Court's exercise of sentencing discretion - Where possible to infer Supreme Court considered it would give significantly higher sentences if sentencing afresh - Whether discretion to substitute sentence enlivened - Whether possible to infer Supreme Court considered District Court's sentences manifestly inadequate.

WORDS AND PHRASES - "discretion to substitute a sentence", "manifestly inadequate", "sentencing discretion".

Cecil, Job v Director of Public Prosecutions (Nauru); Kepae, Josh v Director of Public Prosecutions (Nauru); Jeremiah, John v Director of Public Prosecutions (Nauru)

[\[2017\] HCA 46](#)

20/10/2017

CRIMINAL LAW - Appeal against conviction - Second or subsequent appeal - Application for permission to appeal pursuant to s353A(1) of Criminal Law Consolidation Act 1935 (SA) - Where appellant convicted of murder - Where expert evidence of time of death given at trial based on stomach contents of deceased - Where new evidence demonstrated expert estimation of time of death at trial erroneous - Where new evidence required to be fresh and compelling in order to be admitted - Where evidence compelling if reliable, substantial and highly probative in context of issues in dispute at trial - Whether new evidence substantial - Whether new evidence highly probative in context of issues in dispute at trial - Whether in interests of justice to consider new evidence on appeal - Whether admission of evidence based on stomach contents at trial occasioned substantial miscarriage of justice - Whether significant possibility jury acting reasonably would have acquitted had new evidence been before it.

WORDS AND PHRASES - "compelling", "fresh evidence", "highly probative in the context of the issues in dispute at the trial", "second or subsequent appeal", "substantial", "substantial miscarriage of justice".

Van Beelen, Frits George v The Queen

[\[2017\] HCA 48](#)

08/11/2017

FAMILY LAW - Financial agreements - Family Law Act 1975 (Cth), Pt VIII A - Pre-nuptial agreement - Post-nuptial agreement - Where fiancêe wealthy - Where fiancêe had no substantial assets - Where fiancêe moved to Australia for purposes of marriage - Where fiancêe had no community or connections in Australia - Where fiancêe relied on fiancêe for all things - Where pre-nuptial agreement provided to fiancêe shortly before wedding - Where fiancêe told fiancêe that if she did not sign agreement wedding would not go ahead - Where independent solicitor advised fiancêe against signing - Where pre-nuptial agreement signed - Where substantially identical post-nuptial agreement signed - Whether agreements voidable for duress, undue influence, or unconscionable conduct - Whether primary judge's reasons adequate.

WORDS AND PHRASES - "adequate reasons", "duress", "financial agreement", "illegitimate pressure", "independent legal advice", "maintenance order", "post-nuptial agreement", "pre-nuptial agreement", "property adjustment", "special disadvantage", "unconscionable conduct", "undue influence", "vitiating factor".

Thorne v Kennedy

[\[2017\] HCA 49](#)

08/11/2017

PRACTICE AND PROCEDURE - Leave to issue or file document - Where applicant seeks declaration various steps are reasonable in order for him not to be incapable under s44(i) of Constitution of being chosen as Senator - Whether declaration involves a justiciable matter. WORDS AND PHRASES - "advisory opinion", "all steps that are reasonably required", "declaration", "foreign citizenship", "hypothetical facts", "incapable of being chosen", "matter".

In the matter of an application by Barrow, David Charles for leave to issue or file

[\[2017\] HCA 47](#)

07/11/2017

Victorian Supreme Court Cases

Court of Appeal

ACCIDENT COMPENSATION - Leave to appeal - Appeal - Application under s134AB(16) of the Accident Compensation Act 1985 - 'Serious injury' - Whether order refusing leave to bring proceedings vitiated by failure of judge to consider applicant's entire case - Whether judge's reasons sufficient - Leave to appeal granted - Appeal allowed.

Htoo, K'Ser v Victorian WorkCover Authority

Osborn, Priest, and Ashley JJA

[\[2017\] VSCA 321](#)

08/11/2017

ADMINISTRATIVE LAW - Appeal on question of law - Primary judge allowed appeal against VCAT order that landlord execute new lease - Whether primary judge erred in concluding no evidence to support various VCAT findings - No evidence that premises closed for six months - Various findings based on erroneous primary finding as to duration of closure of premises - Vitiating error - Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1986) 162 CLR 24 and SZQRW v Minister for Immigration and Citizenship (2012) 134 ALD 454 applied - Victorian Civil and Administrative Tribunal Act 1998 s148(1).

LANDLORD AND TENANT - Retail lease - Landlord and tenant agreed on granting of new lease - Tenant closed business to carry out renovations on premises - Landlord failed to execute new lease - Tenant expended moneys on renovations during closure - VCAT ordered that landlord execute new lease - Primary judge ordered that landlord pay equitable compensation for moneys expended during closure.

EQUITY - Estoppel - Proprietary estoppel - Remedies - Equitable compensation ameliorated detrimental reliance upon promise - Donis v Donis (2007) 19 VR 577 discussed.

APPEALS - Practice and procedure - Availability of notice of contention procedure in appeal under Victorian Civil and Administrative Tribunal Act 1998 s148(1) - Where matter addressed in notice of contention not raised before VCAT - Applicant not permitted to raise matter on appeal.

Risi P/L (ACN 108 095 790) v Pin Oak Holdings P/L (ACN 066 304 710)

Tate, Santamaria, and Hansen JJA

[\[2017\] VSCA 317](#)

03/11/2017

CONTRACT - Appeal - Offer and acceptance - Exchange of emails - Whether exchange of emails gave rise to enforceable agreement - Whether parties made binding contract - No offer made - No contract entered into - Application for leave to appeal granted - Appeal allowed - Trial judge's declaration of existence of contract set aside.

Birdsey, Jennifer Anne v Vincent, Susan Lee and Gunn, Gregory Neil William; Vincent, Susan Lee and Gunn, Gregory Neil William v Birdsey, Jennifer Anne

Santamaria, Beach, and Ashley JJA

[\[2017\] VSCA 323](#)

08/11/2017

CONTRACT - Appeal - Whether parties to a written agreement to raise cattle on, and have sole occupancy of, land for annual fee had entered into a new contract by implication from their course of conduct after expiration of initial contract term - Whether conduct of husband bound wife - Whether principles governing an “over holding” under a lease applied to render wife a tenant-at-will - Whether common law estoppel by convention prevented husband and wife from denying they remained bound by agreement - Leave granted; appeal dismissed.

Frontlink P/L (ACN 074 034 96) v Cynthia Feldman and Ramarim P/L (ACN 147 722 781)

Osborn, Whelan and Kyrou JJA

[\[2017\] VSCA 319](#)

10/11/2017

CRIMINAL LAW - Appeal - Interlocutory appeal - Evidence - Admissibility - Circumstantial case - Relevance - Probative value - Whether danger of unfair prejudice outweighed probative value - Judge refused to exclude evidence - No error - Routine evidentiary ruling - Matter not appropriate for interlocutory appeal - Leave to appeal refused - Paulino v The Queen [2010] VSCA 294 referred to - Evidence Act 2008 s137.

Harris, Shaun (a Pseudonym) v The Queen

Maxwell P, Priest, and Kyrou JJA

[\[2017\] VSCA 316](#)

31/10/2017

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Armed robbery - Causing serious injury in circumstances of gross violence - Ten years' imprisonment - Non-parole period of seven years - Parity - Whether sentence imposed on individual charge demonstrated unacceptable disparity with co-offender - Whether sentence manifestly excessive - Whether sentence 'wholly outside the range of sentencing options' - No error - Appeal dismissed - DPP v Dalgliesh [2017] HCA 41 - Lowe v The Queen (1984) 154 CLR 606.

Hi, Charles v The Queen

Kaye JA and Beale AJA

[\[2017\] VSCA 315](#)

01/11/2017

CRIMINAL LAW - Appeal - Sentence - Co-offenders - Shooting at occupied police vehicle at close range - Charge of recklessly causing injury with respect to one police officer and reckless conduct endangering serious injury with respect to another - Both charges based on single gunshot - Whether double punishment in circumstances where cumulation of two years ordered between the sentences of imprisonment on each charge - No error - Further charges of criminal damage, being prohibited person in possession of firearm, attempted arson, arson and theft of motor car - Whether sentences manifestly excessive - Objective seriousness of offending high - Extensive criminal histories - Poor prospects of rehabilitation - Sentence of 12 months' imprisonment for possession of firearm inadequate - Leave to appeal refused - Pearce v The Queen (1998) 194 CLR 610; Lecornu v The Queen (2012) 36 VR 382 applied.

Phillips, Rodney v The Queen; Liszczak, Sam v The Queen

Weinberg JA, Osborn, and Priest JJA

[\[2017\] VSCA 313](#)

31/10/2017

CRIMINAL LAW - Appeal - Sentence - Crown appeal - Child homicide - Respondent, in spontaneous act of anger, stepped on three year old child, resulting in death - Sentenced to nine years and six months' imprisonment with non-parole period of six years and six months - Whether sentence manifestly inadequate - Use of extrinsic material in construing provision creating new offence - Whether manifested legislative intent to have courts impose significant heavier sentences for child homicide than traditionally given for manslaughter of young children - Respondent confessed to offence in circumstances where conviction might not have been possible absent his having done so - Significant sentence discount necessary by reason of confession - Sentence lenient but not wholly outside range - Appeal dismissed - Crimes Act 1958 s5A.

Director of Public Prosecutions [DPP] v Woodford, Harley David

Weinberg, Osborn, and Priest JJA

[\[2017\] VSCA 312](#)

31/10/2017

CRIMINAL LAW - Appeal - Sentence - Parity - Manslaughter - Applicant sentenced to nine years' imprisonment with non-parole period of six years - Co-offender sentenced to three years and six months' imprisonment with non-parole period of two years - Whether disparity of sentences justified - Material differences - Significant differences in role - Co-offender undertook to give evidence against applicant - Reasonably open to judge to differentiate - Leave to appeal refused.

Philp, Garren John v The Queen

Maxwell P and Croucher AJA

[\[2017\] VSCA 320](#)

12/05/2017

CRIMINAL LAW - Appeal - Sentence - Two charges of murder, one charge of infanticide and one charge of attempted murder - Applicant sentenced to 26 years and 6 months' imprisonment with a non-parole period of 20 years - Whether reasonably arguable that sentence manifestly excessive - Whether trial judge gave sufficient weight to mitigating factors - Sentence within range - Leave to appeal refused.

Guode, Akon v The Queen

Weinberg JA

[\[2017\] VSCA 311](#)

30/10/2017

CRIMINAL LAW - Application for leave to appeal - Sentence - Applicant convicted of trafficking a drug of dependence (heroin); possession of a drug of dependence (cannabis); dealing in property reasonably suspected of being proceeds of crime; possessing prohibited weapons; possessing an explosive substance - Total effective sentence of three years' imprisonment - Non-parole period of 15 months - Whether manifestly excessive - Whether sentenced on an incorrect factual basis - Specific error - Applicant resentenced to total effective sentence of two years and three months' imprisonment - Non-parole period of one year - Fine for possession of a small amount of cannabis for personal use exceeded maximum permissible fine - Fine reduced.

Tran, Bang v The Queen

Kaye JA and Beale AJA

[\[2017\] VSCA 314](#)

01/11/2017

CRIMINAL LAW - Application for leave to appeal against sentence - Applicant sentenced to a total effective sentence of 7 years' imprisonment with a non-parole period of 5 years - Charges over two indictments including use of false identification information and related offences, trafficking and possession of drugs of dependence (various substances), handling stolen goods, knowingly dealing with proceeds of crime, possession of prohibited weapon and possession of explosives without licence - Offences committed whilst on bail and whilst undergoing Community Correction Order - Whether reasonably arguable that orders for cumulation manifestly excessive - Principle of totality - Cumulation within range - Leave to appeal refused.

O'Loughlin, Jack v The Queen

Weinberg JA

[\[2017\] VSCA 325](#)

06/11/2017

CRIMINAL LAW - Interlocutory appeal - Application to review decision by County Court judge refusing certification under s295(3) of the Criminal Procedure Act 2009 - Applicant charged with importation of a border controlled drug (methamphetamine) 'by proxy' - Coincidence evidence - Whether trial judge erred in finding that probative value of evidence substantially outweighs prejudicial effect - Reasonably open to find evidence admissible - Application for review dismissed.

Pope, Emanuel (a Pseudonym) v The Queen

Weinberg, Priest, and Beach JJA

[\[2017\] VSCA 324](#)

02/11/2017

EQUITY - Fiduciary obligations - Commercial relationship governed by contract - Factors relevant to existence of fiduciary relationship - Whether fiduciary relationship existed - Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41 discussed - John Alexander's Clubs Pty Ltd v White City Tennis Club Ltd (2010) 241 CLR 1 applied.

CONTRACT - Construction and interpretation - Agreement governing construction and operation of adventure golf course - Where separate management agreement between landowner and manager - Where agreement duration depended upon occupation of site 'in accordance with' management agreement - Whether agreement duration extended to renewal or 'holding over' of management agreement - Issue not raised at trial.

CONTRACT - Construction and interpretation - Recital as aid to construction - Where recital inconsistent with operative provision in contract - Franklins Pty Ltd v Metcash Trading Ltd (2009) 76 NSWLR 603 applied.

APPEALS - Issue not raised at trial - Where conduct at trial reveals departure from pleaded claim - Where issue as to construction and interpretation of contract - Whether applicant permitted to raise issue on application for leave to appeal - Vlahos Pty Ltd v Vlahos [2017] VSCA 166 applied.

WORDS AND PHRASES - 'fiduciary relationship' - 'fiduciary obligations' - 'vulnerability' - 'joint venture' - 'in accordance with' - 'renewal' - 'holding over'.

Adventure Golf Systems Australia P/L (ACN 077 643 175) v Belgravia Health & Leisure Group P/L (ACN 005 087 463)

Santamaria, Kaye, and Ashley JJA

[\[2017\] VSCA 326](#)

08/11/2017

PRACTICE AND PROCEDURE - Costs - Costs of application for leave to appeal - Where application for leave to appeal had no prospects of success - Where applicant failed to establish elements of alleged fraud and perjury - Where conduct of applicant impugned - Costs payable on indemnity basis - Supreme Court (General Civil Procedure) Rules 2015 r64.38.

Gann, Jason William v Hosny, Joseph

Santamaria, Kaye, and Ashley JJA

[\[2017\] VSCA 318](#)

02/11/2017

Commercial Court

APPEAL - Appeal from Associate Judge under Supreme Court (General Civil Procedure) Rules 2015 r77.06 - Directors resolving to admit a person to membership based upon the nomination and/or wishes of a deceased member - Constitution required that applicant for membership must be proposed by another member and signed by the proposer - Validating Order made under s1322(4)(a) that admission as a member not invalid - Whether error made in making validating order on basis that no substantial injustice for purposes of Corporations Act 2001 (Cth) s1322(6)(c) - No error - No substantial injustice if discretion re-exercised - Appeal dismissed.

In the matter of Donkey Wheel Ltd (ACN 109 045 650) Between: Mark Jonathan Irving Brunner v Donkey Wheel Ltd (ACN 109 045 650)

Kennedy J

[\[2017\] VSC 634](#)

08/11/2017

COURTS AND TRIBUNALS - Procedural fairness - Apprehended bias - Prejudgment - Whether previous findings in earlier similar application generate a reasonable apprehension of bias in subsequent application - Principles considered.

Bodycorp Repairers P/L (ACN 068 589 408) v Maisno, Anunziato Enzo (also known as Michael Maisano and Michal Mason) & Ors

Riordan J

[\[2017\] VSC 676](#)

3/11/2017

EVIDENCE - Privilege - Waiver of privilege - Whether sufficient disclosure - Whether inconsistent conduct.

EVIDENCE - In-house counsel - Communications - Whether privileged - Whether independence is a requirement.

EVIDENCE - Communication of privileged documents to third parties - Third parties bound by confidentiality - Documents retain privilege.

Banksia Securities Ltd (ACN 004 736 458) (receivers and managers appointed) (in liquidation) v The Trust Company (Nominees) Ltd (ACN 000 154 441)

Sifris J

[\[2017\] VSC 583](#)

28/09/2017

EXECUTION - Mortgagee's judgment for possession of land - Enforcement by warrant of possession - Warrant executed - Subsequent re-entry and hindrance by mortgagor - Rules silent on procedure to file and execute new warrant - Court's power to allow filing of fresh warrant - Court's ancillary power in aid of enforcement to restrain mortgagor from attempting another re-entry - Court's coextensive inherent jurisdiction - Supreme Court (General Civil Procedure) Rules 2015, r66.15.

Australia and New Zealand Banking Group Ltd v Elias, Sandra

Mukhtar AsJ

[\[2017\] VSC 663](#)

27/10/2017

PRACTICE AND PROCEDURE - Group proceedings - Orders made for approval of settlement of group proceeding - Supreme Court Act 1986 (Vic) Part 4A, s33V and s33ZF - Application by Administrator of Settlement Distribution Fund for judicial advice in respect of certain questions in relation to the payment of potential liabilities of the Fund under distribution and costs associated with the distribution of that Fund.

Camping Warehouse Australia P/L (formerly Mountain Buggy Australia P/L) (ACN 097 355 578) v Downer EDI Ltd (ACN 003 872 848)

Digby J

[\[2017\] VSC 660](#)

31/10/2017

Common Law Division

APPEALS - Failure to register dog - Fine with no conviction - Appeal on Question of Law - Extension of time required - Merits of Proposed Grounds of Appeal - Whether Supreme Court of Victoria a valid court - Validity of Acts of Parliament - Whether Governor validly appointed - Grounds without merit - Proceeding dismissed - Constitution Act 1975; Domestic Animals Act 1994 s10.

CONSTITUTIONAL LAW - Whether Supreme Court a valid court - Validity of Acts of Parliament - Validity of Appointment of Governor - Constitution Act 1975.

Sill, Jeffrey Craig v City of Wodonga

Ginnane J

[\[2017\] VSC 671](#)

27/10/2017

CHARITABLE TRUSTS - Where terms of will directed trustee to apply property for the purposes of displaying specified chattels and building rental units - Where ex-servicemen to benefit from rental units - Whether building rental units impracticable - Whether upon proper construction of will general charitable intention can be identified - Whether trust funds can be applied cy-praes - Where no general charitable intention - Attorney-General (New South Wales) v Perpetual Trustee Co Ltd (1940) 63 CLR 209.

Letcher, Mary Elizabeth (as executor of the will and estate of Joyce Mary Hatfield

Marks, deceased) v Indian, Merrilyn Joy and Attorney General for the State of Victoria

McMillan J

[\[2017\] VSC 665](#)

01/11/2017

COSTS - Whether party granted an interlocutory injunction but unsuccessful at trial should receive costs of interlocutory application - Whether defendant to counterclaim acted unreasonably in rejecting Calderbank offers - Whether interest should be calculated from date of filing counterclaim - Supreme Court Act s60(1).

Crowe Horwath (Aust) P/L v Loone, Anthony (No 4)

McDonald J

[\[2017\] VSC 656](#)

30/10/2017

DAMAGES - Personal injury - Assault - Aggravated damages - Lamb v Cotogno (1987) 164 CLR 1 - Carter & Anor v Walker & Anor (2010) 32 VR 1 - Victoria Stevedoring v Farlow [1963] VR 594 - Malec v Hutton (1990) 169 CLR 638.

Brook, Jaidan v Kempton, Ashley & Ors

Keogh J

[\[2017\] VSC 661](#)

27/10/2017

JUDICIAL REVIEW AND APPEALS - Appeal from Magistrates' Court under the Criminal Procedure Act 2009 (Vic) s272 - Evidence relating to prescribed road safety camera in certificate under s83A of the Road Safety Act 1986 - Evidence to the contrary - Road Safety Act 1986 s3, s66, s81, s83A(1) - Road Safety (General) Regulations 2009 regs 5, 30, 35, 37 - Hobson Bay City Council v Viking Group Holdings Pty Ltd [2010] VSC 386 (27 August 2010).

Guss, Joseph v Traffic Camera Office

Keogh J

[\[2017\] VSC 654](#)

27/10/2017

JUDICIAL REVIEW - Medical Panel - Compensable injury - Asserted failure to provide adequate reasons - Whether Panel took into account irrelevant considerations - History taken by Panel in issue - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) - Wingfoot v Australia Partners Pty Ltd v Kocak.

Karabinis, Fotini v Bendrups, Dr Andrea (and others according to the schedule)

J Forrest J

[\[2017\] VSC 648](#)

31/10/2017

JUDICIAL REVIEW - Workplace injury - Medical Panel - Whether jurisdictional errors - Relevant considerations - Psychiatric condition - Medical Panel determining no psychiatric condition - Second Panel determining presence of psychiatric condition - Whether second Panel took into account first Panel's opinion - Adequacy of reasons - Proceeding dismissed - Workplace Injury Rehabilitation and Compensation Act 2013 s3, s313.

St Joseph's Regional College v Longham, Stephen & Ors

Ginnane J

[\[2017\] VSC 657](#)

27/10/2017

PLANNING AND ENVIRONMENT - Appeal on question of law from Victorian Civil and Administrative Tribunal - Objection to grant of planning permit - Whether must contain positive statement of opposition to grant of permit - Whether that opposition can be inferred without that statement - Importance of encouraging equal public participation in planning decision-making processes and also ensuring compliance with minimum formality requirements for making objections - Statutory interpretation - Relevance of previous judicial decision when interpreting new provisions enacted with knowledge of that decision - Statutory distinction between an 'objection' and 'submission' - Whether document in question was one or the other - Whether VCAT erred in law in determining that it was a valid objection - Planning and Environment Act 1987 (Vic) s57(1)-(2), Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1)

Phillip Mannerheim Holdings P/L v Nillumbik Shire Council

Bell J

[\[2017\] VSC 670](#)

02/11/2017

PRACTICE AND PROCEDURE - Application for an adjournment of the Defendants' Application to set aside judgment obtained in absence of the first to fourth defendants - Application for adjournment refused - Application to set aside judgment obtained in absence of the first to fourth defendants - Application to extend time within which to apply to set aside judgment - Relevant principles - Rules 3.02 and 49.02 of the Supreme Court (General Civil Procedure) Rules 2015.

Prior, Stephen v Lakic, Bogdanka; Lakic, Zdravko; Lakic, Boris; and Lakic, Njegos and The Registrar of Titles (No 2)

Digby J

[\[2017\] VSC 659](#)

27/10/2017

PRACTICE AND PROCEDURE - Application for an extension of time to bring an action for negligence - Plaintiff suffered injury following surgery - Alleged negligence of Medical Practitioner - Hospital - Whether limitation period should be extended in circumstances where there is a delay of approximately 13 years - Consideration of the reasons for delay and prejudice to the defendants - Whether just and reasonable to extend time - Prince Alfred College Inc v ADC (2016) 258 CLR 134, Tsiadis v Patterson (2001) 4 VR 114, Davies v Nilsen [2015] VSC 584, Bucic v Arnej Pty Ltd [2017] VSC 508 - Limitation of Actions Act 1958, s27K and s27L.

Holcombe, Shane v Hunt, Roland and Numurkah Hospital District Health Service

Ierodiaconou AsJ

[\[2017\] VSC 666](#)

01/11/2017

PRACTICE AND PROCEDURE - Application for extension of time to file amended originating motion eight months outside of 60 day period prescribed by O56.02(1) of Supreme Court (General Civil Procedure) Rules 2015 - Whether special circumstances warrant the grant of extension of time - No special circumstances - Application refused - Racing Act 1958 s31, s35E(2)(a)-(c) - Casino Control Act 1991 s74(1) - Supreme Court (General Civil Procedure) Rules 2015 O56.02(1), (3).

Madafferi, Antonio v The Chief Commissioner of Police

McDonald J

[\[2017\] VSC 652](#)

31/10/2017

PRACTICE AND PROCEDURE - Group proceedings - Application for approval of settlement - Court approval of settlement of claim on walk away basis - Should judgment bind all group members - Only registered group members bound by settlement - Supreme Court Act 1986 (Vic), s33V and s33X.

Jackson, Valerie Ellen v GP & JM Bruty P/L (ACN 108 581 111); Bruty, Darren; Bruty, Jennifer Mary; Bruty, Jason Matthew and Kehoe, Tania Marie (as executors of Geoffrey Philip Bruty)

J Forrest J

[\[2017\] VSC 622](#)

31/10/2017

PROPERTY - Restrictive covenant - Covenant restricting, among other things, the erection of more than one dwelling on the land - Application to modify restrictions in covenant pursuant to the Property Law Act 1958 (Vic) - Proposed development involving subdivision and construction of four new dwellings on the land - Whether precedent already set by previous developments - Whether modification will not substantially injure the persons entitled to the benefit - Relevance of original purpose of covenant in argument for modification - Whether restriction on the value of a house erected on the land should be discharged - Application partially refused.

In the matter of an application pursuant to s84 of the Property Law Act 1958 for the modification of a restrictive covenant by: Re RJ and RG Bakey P/L

Ierodiaconou AsJ

[\[2017\] VSC 669](#)

01/11/2017

TRUSTS - Where plaintiffs claimed repayment of loan from defendants - Where loan claim abandoned and plaintiffs alleged constructive trust against defendants - Where at trial plaintiffs sought to claim in the alternative a resulting trust - Claim dismissed - No point of principle.

LOAN - Where plaintiffs claim repayment of loan to defendant - Defendant alleges a gift or payment for services - Where plaintiffs claim dismissed - No point of principle.

Ozaltay, Bourhan and Ozaltay, Safak v Atilla, Selen and Coffey, Sibel (also known as Sibel Mustafa)

McMillan J

[\[2017\] VSC 664](#)

01/11/2017

Criminal Division

CONTEMPT - Examination under Major Crime (Investigative Powers) Act 2004 ('the Act') - Whether the Chief Examiner can require a witness to take an oath or make an affirmation under s36(2)(a) of the Act without identifying the prescribed form of the oath and administering the oath - Whether there can be a refusal to take an oath or make an affirmation, under s49(1)(b) of the Act, before the identification of the prescribed form of the oath and administration of the oath.

The Queen (on the application of the Chief Examiner) v Williams, Gordon (a Pseudonym) (Contempt)

Riordan J

[\[2017\] VSC 642](#)

20/11/2017

CRIMINAL LAW - Sentence - Plea of guilty - Manslaughter - Affray at hotel - Deceased died as a result of a single punch from the accused - Deceased attempting to remove friend from the affray when hit by the accused - History of proceedings - Accused originally charged with murder - Accused of previously good character - Remorse - Good prospects of rehabilitation - General and specific deterrence - *Sentencing Act 1991* ss 9A & 9C - Principle of legality.

The Queen v Lee, Andrew William

Lasry J

[\[2017\] VSC 678](#)

10/11/2017

CRIMINAL LAW - Trial venue - Trial fixed for hearing in locality where the alleged offences took place - Application for change of trial venue from Morwell to Melbourne - Criminal Procedure Act 2009 (Vic) s169, s192 - DPP v Bennett (2004) 10 VR 355 - R v Vjestica [2008] VSCA 47 (28 March 2008).

Director of Public Prosecutions [DPP] v Hazelwood Power Corporation P/L

Keogh J

[\[2017\] VSC 662](#)

27/10/2017

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.

Atlas Facilities Pty Ltd v Veneziano & Ors

[\[2017\] VCC 1569](#)

Judge Cosgrave

1/11/2017

Chen v Tang

[\[2017\] VCC 1538](#)

Judge Cosgrave

27/10/2017

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

CAVEAT - Lodged by purchaser in respect of alleged "agreements" - Contracts of sale delivered to the purchaser - Purchaser's solicitors lodged caveats and proposed a deed of variation of the contracts - Default by purchaser in paying the balance of deposits by the date specified in the contracts - Whether the contracts constituted "offers" which remained open for acceptance - Whether the "offers" were revoked or lapsed - Whether the "offers" were subsequently accepted by the purchaser resulting in enforceable contracts which could be protected by the lodgement of a later caveat - All caveats ordered to be removed - Section 90(3) *Transfer of Land Act 1950 (Vic)*.

Matthews v Knight & Anor

[\[2017\] VCC 1537](#)

Judge Anderson

27/10/2017

CONTRACT - Plaintiff seeking to recover judgment debt - Whether plaintiff entitled to debit enforcement expenses from defendant's loan account without telling her first - Was the defendant entitled to cease paying her monthly repayments because of the plaintiff's conduct - Did the plaintiff breach any implied term to act reasonably and in good faith.

Westpac Banking Corporation v Anderson

[\[2017\] VCC 1519](#)

Judge A M Ryan

1/11/2017

CONTRACTS - Terms of settlement - Construction - Breach - Pursuing alternative remedies - Misleading and deceptive conduct - “No transaction” case - Basis for assessing loss - Assessment of damages - Damages for loss of opportunity.

F. Ferguson Wool Pty Ltd v Mayback Pty Ltd

[\[2017\] VCC 1562](#)

Judge Woodward

1/11/2017

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

Articles

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

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

Administrative Law

Judicial review - Statutory powers - Constitution - Monopoly power - R v Panel of Take-overs and Mergers Ex p. Datafin - UK

Williams, A. "Judicial review and monopoly power: some sceptical thoughts." (2017) 133(October) LQR 656-682.

Constitutional Law

Parliament - Legislative power - Parliamentary sovereignty - Limitations - Human rights - Scotland Act 1998 - Jackson v Attorney General R v Secretary of State for Transport, Factortame (No 2) - Brexit - EU - UK

Ekins, R. "Legislative freedom in the United Kingdom." (2017) 133(October) LQR 582-605.

Contract Law

Technology - Boilerplate clauses - Electronic commerce - Standardisation - UK

Radin, M. "The deformation of contract in the information society." (2017) 37(3) Oxford JLS 505-533.

Criminal Law & Procedure

Technology - Digitisation - Electronic filing - E-filing - Online courts - Modernisation - Court administration - Court records - Access - UK

Heaton, N. "In search of 21st-century courts." (2017) 161(36) Sol J 32.

Duty to report crime - Citizens - Professionals - Commercial organisations - Child abuse - Protection - Children Act 2004 (UK) - Bribery Act 2010 (UK) - Criminalisation - Crime prevention - UK

Ashworth, A. "Positive duties, regulation and the criminal sanction." (2017) 133(October) LQR 606-630.

Sexual violence - Non-consensual pornography - Private images - Consent - Revenge pornography - Cyber harassment - Online images - Online abuse - Technology - Cultural harm - Australia - UK

McGlynn, C. and E. Rackley. "Image-based sexual abuse." (2017) 37(3) Oxford JLS 534-561.

International Law

Globalisation - Transnationalism - Legal trends - UK

Collins, R. "The slipperiness of 'global law'." (2017) 37(3) Oxford JLS 714-739.

Legal Aid

Access to justice - Costs - Legal aid - Funding - *Coventry v Lawrence (No 3)* - UK
Higgins, A. "The costs of civil justice and who pays?" (2017) 37(3) *Oxford JLS* 687-713.

Medical Law

Clinical trials - Biomedical research - Injury - Ex gratia compensation - Informed consent - Ethics - Pharmaceutical industry - Commercial sponsors - Therapeutic Goods Administration - Comparative analysis - UK - NZ - Australia
Manning, J. "Does the law on compensation for research-related injury in the UK, Australia, and New Zealand meet ethical requirements?" (2017) 25(3) *Med L Rev* 397-427.

Practice & Procedure

Civil evidence - Civil proceedings - Malicious prosecution - Pleadings - Statements of case - UK
Sorabji, J. "Malicious protection and abuse of process: *Willers v Joyce* [2016] UKSC 43." (2017) 36(4) *CJQ* 387-400.

Civil procedure - Default judgments - Setting aside - Courts - Rules of the Supreme Court (UK), r 3.9 - Research study - UK
De Saulles, D. "Defending the civil justice system: the function of sanctions." (2017) 36(4) *CJQ* 462-483.

Class actions - Judicial intervention - Litigation funding agreements - Privity of contract - Variation - Settlement - *Money Max v QBE Insurance Group* - Federal Court of Australia Act 1976 (Cth), Pt IVA - Australia
Hickey, S. "Oversight or interference? judicial intervention in litigation funding: *Earglow Pty Ltd v Newcrest Mining Ltd* [2016] FCA 1433." (2017) 36(4) *CJQ* 420-426.

Litigation - Costs - Intervention - Submission - Supreme Court (UK) - Judges role - *R(Miller) v Secretary of State for Exiting the European Union* - Criminal Justice and Courts Act 2015 (UK), s87 - UK
Samuels, A. "The intervener is here to stay." (2017) 167 (7764) *NLJ* 17.

Torts

Apology - Sincerity - Ordered - Freedom of expression - Intent - Victims - Court orders - Australia - USA - UK
Dijck, G. "The ordered apology." (2017) 37(3) *Oxford JLS* 562-587.

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



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- 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

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- Library news and events

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