



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
December 8
2017

Library News

The final bulletin for 2017 will be published on Thursday 21 December 2017. The first bulletin for 2018 will be published on 2 February 2018.

Law Library of Victoria Christmas and New Year closing and January reduced hours

The Law Library of Victoria will be closed from noon on Friday 22 December 2017 and will re-open on Tuesday 2 January 2018.

The Law Library of Victoria will operate on reduced hours (opening at 9am and closing at 5pm) from 2 January 2018 until 26 January 2018. Normal hours will resume from 29 January 2018. You can still visit our website to search our catalogue, view latest judgments, legislation and more. Visit our website at www.lawlibrary.vic.gov.au.

SUBSCRIBE TO THE LIBRARY BULLETIN

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

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



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

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

Contents

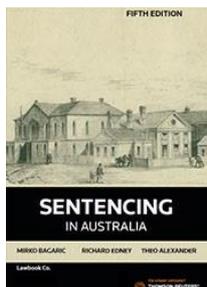
| | | |
|---|----|-----------|
| New Books | | 3 |
| Legislation | | 4 |
| Victorian Bills | 4 | |
| Victorian Assents | 4 | |
| Proclamations | 4 | |
| High Court Cases | | 5 |
| Victorian Supreme Court Cases | | 7 |
| Court of Appeal | 7 | |
| Commercial Court | 13 | |
| Common Law Division | 15 | |
| Criminal Division | 20 | |
| County Court of Victoria Cases | | 22 |
| Magistrates' Court of Victoria Cases | | 23 |
| Articles | | 24 |
| Courts | 24 | |
| Human Rights | 24 | |
| International Law | 24 | |
| Jurisprudence | 25 | |
| Legal Aid | 25 | |
| Legal History | 25 | |
| Legal Profession | 25 | |

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.

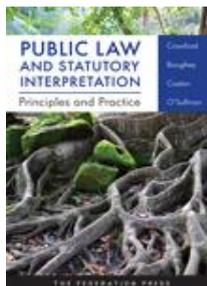


Bagaric, Mirko, Edney, Richard and Alexander, Theodosios, *Sentencing in Australia*

5th ed., Thomson Reuters (Professional) Australia, Pyrmont, 2017

Call number: 345.0772 BAG.5 (County Court Library and Magistrates' Court Library)

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

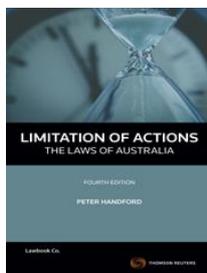


Crawford, Lisa Burton, Boughy, Janina, Castan, Melissa and O'Sullivan, Maria, *Public law and statutory interpretation: principles and practice*

The Federation Press, Annandale, 2017

Call number: 348.022 CRA (Supreme Court Library)

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

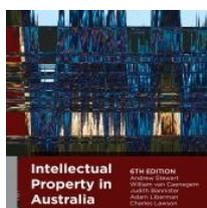


Hanford, Peter R., *Limitations of actions: the laws of Australia*

4th ed., Thomson Reuters Australia, Pyrmont, 2017

Call number: 347.94052 HAN.4 (County Court Library, VCAT Library)

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



Stewart, Andrew, van Caenegem, William, Bannister, Judith, Liberman, Adam and Lawson, Charles, *Intellectual property in Australia*

6th ed., LexisNexis Butterworths, Chatswood, 2017

Call number: 346.048 MCK.6 (Supreme Court Library)

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



EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

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

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

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

Legislation

Victorian Bills

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

- [*Financial Management and Constitution Acts Amendment Bill 2017*](#)
- [*Major Events Legislation Amendment \(Ticket Scalping and Other Matters\) Bill 2017*](#)
- [*Primary Industries Legislation Amendment Bill 2017*](#)

Victorian Assents

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

- [*Fines Reform Amendment Act 2017*](#) No. 59/2017
- [*Victorian Data Sharing Act 2017*](#) No. 60/2017
- [*Voluntary Assisted Dying Act 2017*](#) No. 61/2017

Proclamations

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

- [*Children and Justice Legislation Amendment \(Youth Justice Reform\) Act 2017*](#) No. 43/2017
 - Sections 1-3, 30-33, 40, 52-58, 60, 61, 64, 66 of this Act came into operation on 30 November 2017 (SG406 28.11.2017)
- [*Sentencing Amendment \(Sentencing Standards\) Act 2017*](#) No. 34/2017
 - Sections 1-16, 43, 44 of this Act came into operation on 29 November 2017 (SG406 28.11.2017)

No Victorian Acts have come into operation by forced commencement since the last Library Bulletin.

High Court Cases

CONSTITUTIONAL LAW (CTH) - Parliamentary elections - Reference to Court of Disputed Returns - Where Court held there was a vacancy in representation of New South Wales in Senate - Where Court made directions for special count of ballot papers to fill vacancy - Where orders sought following special count that Ms Hollie Hughes be declared elected as senator to fill vacancy - Where Ms Hughes nominated for election to Senate at 2016 general election - Where Ms Hughes not declared elected following polling for 2016 general election - Where Ms Hughes appointed to Administrative Appeals Tribunal one year after 2016 general election - Where Ms Hughes resigned from that position upon Court holding there was a vacancy in representation of New South Wales in Senate - Where that position was "office of profit under the Crown" within meaning of s44(iv) of Constitution - Whether holding position for that period rendered Ms Hughes "incapable of being chosen" as a senator under s44(iv) of Constitution.

CONSTITUTIONAL LAW (CTH) - Parliamentary elections - Reference to Court of Disputed Returns - Jurisdiction of Court to determine whether a person sought to be declared elected to fill a vacancy is disqualified under s44 of Constitution.

WORDS AND PHRASES - "electoral choice", "electoral process", "hiatus", "incapable of being chosen", "nomination", "office of profit under the Crown", "polling", "process of being chosen", "scrutiny", "special count", "vacancy".

In the matter of questions referred to the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918 (Cth) concerning The Hon Fiona Nash (No 2)

[\[2017\] HCA 52](#)

06/12/2017

INDUSTRIAL LAW (CTH) - Fair Work Act 2009 (Cth) - Enterprise agreements - Approval of enterprise agreements by Fair Work Commission - Where employer in process of establishing new undertaking - Where existing employees in other undertakings of employer accepted offer of employment in new undertaking - Where enterprise agreement made with those employees before new undertaking commenced operations - Whether agreement required to be made as "greenfields agreement" pursuant to s172(2) and (4) of Fair Work Act - Where Commission may approve non-greenfields agreement under s186 of Fair Work Act only where satisfied agreement genuinely agreed to by employees covered by agreement - Whether employees "covered by" agreement from time agreement made or from time employees commence working under agreement.

INDUSTRIAL LAW (CTH) - Fair Work Act 2009 (Cth) - Enterprise agreements - Approval of enterprise agreements by Commission under s186 of Fair Work Act - Where Commission, before approving agreement, required to be satisfied that each award-covered employee would be "better off overall" under agreement than under relevant modern award - Where Commission considered agreement passed better off overall test because clause in agreement entitled employees to payment of any shortfall in entitlement under agreement as compared with entitlement under modern award - Whether Commission failed to engage in comparison between agreement and modern award.

WORDS AND PHRASES - "applies", "better off overall test", "covers", "employees covered by the agreement", "greenfields agreement", "will be covered by the agreement".

ALDI Foods P/L v Shop, Distributive & Allied Employees Association & Anor

[\[2017\] HCA 53](#)

06/12/2017

INDUSTRIAL RELATIONS - Fair Work Act 2009 (Cth) - Protected industrial action - Common requirements for industrial action to qualify as protected industrial action - Where s413(5) of Fair Work Act requires that persons organising or engaging in proposed protected industrial action "must not have contravened any orders that apply to them" in relation to relevant agreement - Where order obtained from Fair Work Commission requiring union to stop organising certain industrial action - Where union contravened order - Whether union's contravention of order precluded satisfaction of common requirement in s413(5) in relation to subsequent industrial action - Whether s413(5) requires only that relevant persons not be contravening orders extant at time of proposed protected industrial action - Whether relevant contraventions limited to contraventions of orders committed in course of organising or engaging in proposed protected industrial action.

INDUSTRIAL RELATIONS - Fair Work Act 2009 (Cth) - Organising, taking or threatening action with intent to coerce contrary to s343 or s348 of Fair Work Act - Whether person must act with intent that action be unlawful, illegitimate or unconscionable - Whether person must have subjective understanding of factual circumstances rendering action unlawful, illegitimate or unconscionable.

WORDS AND PHRASES - "coercive action", "common requirements", "compliance with orders", "extant orders", "intent to coerce", "must not have contravened any orders", "past contravention", "protected industrial action", "statutory interpretation", "unlawful, illegitimate or unconscionable".

Esso Australia P/L v The Australian Workers' Union; The Australian Workers' Union v Esso Australia P/L

[\[2017\] HCA 54](#)

06/12/2017

PRACTICE AND PROCEDURE - Original jurisdiction - Where plaintiff applied for order to show cause why prohibition, certiorari and injunction should not issue in respect of orders in Supreme Court of Victoria - Where orders of Supreme Court approved settlement by group proceeding plaintiffs with nunc pro tunc authority of group members - Where settlement deed purportedly released defendants in group proceedings from all claims - Where plaintiff contended orders made in federal jurisdiction beyond power as not involving a "matter" - Where various defendants to plaintiff's application sought dismissal or summary dismissal - Where plaintiff did not attempt to appeal impugned orders - Where some issues raised pending in District Court of New South Wales - Where issues raised in original jurisdiction would not arise if plaintiff sought leave to appeal in Supreme Court - Whether Court of Appeal of Supreme Court of Victoria has power to entertain an appeal - Whether appropriate to invoke original jurisdiction of High Court.

CONSTITUTIONAL LAW - Constitutional writs - Where plaintiff seeks constitutional writs against judge of Supreme Court of Victoria - Whether judge exercising federal jurisdiction acting as officer of Commonwealth for purposes of s75(v) of Constitution and s33(1)(c) of Judiciary Act 1903 (Cth).

WORDS AND PHRASES - "appeals", "certiorari", "constitutional writs", "construction of settlement deed", "declaration", "extension of time", "federal jurisdiction", "group proceedings", "injunction", "leave to appeal", "officer of the Commonwealth", "prohibition", "settlement of group proceeding".

Dimitrov, Peter Michael v The Supreme Court of Victoria & Ors

[\[2017\] HCA 51](#)

01/12/2017

Victorian Supreme Court Cases

Court of Appeal

CONTRACT - Appeal - Agreement to conduct trailer parts business - Terms of agreement - Whether judge erred in inferring express term of the agreement requiring closure of the first applicant's business - Whether agreement prohibited the second applicant from conducting business at premises of another business - Application for leave to appeal granted - Appeal allowed.

TORT - Conversion - Alleged conversion of stock of second applicant's business - Whether sufficient identification of stock - Whether trial judge quantified value of stock on the basis of unpleaded claim - Whether judge erred in finding that stock belonging to second applicant had been sold to second respondent, therefore dismissing claim in conversion - No error made by trial judge.

APPEALS - Findings of fact - Inferences - Approach of appellate court in reviewing findings of fact - Principles on drawing inferences - Whether evidence supported inference of express term of agreement that business of second applicant would discontinue.

He, William Jingcheng; J.C. He International Trade P/L (ACN 162 966 483); Liu, Cisely v Huang, Liangping; Top Union Business P/L (in liq) (ACN 162 966 485) (No 2)

Santamaria, Beach, and Kaye JJA

[\[2017\] VSCA 349](#)

29/11/2017

CORPORATIONS - Managed investment schemes - Acquisition of scheme interests - Where investors paid deposits and borrowed loan amount under loan agreements with financier to fund balance of application moneys - Where financier agreed to lend loan amount by paying it to responsible entity on behalf of investors - Where journal entries in books of financier and responsible entity purported to make payment of loan amount - Where both companies in liquidation - Where financier commenced recovery proceedings against defaulting investors under loan agreements - Corporations Act 2001 (Cth) ch 5C.

CONTRACT - Construction of loan agreement - Loan agreements between company and investors - Where company agreed to lend loan amount by paying it to another company - Where journal entries in books of both companies purported to make payment of loan amount - Whether payment under loan agreement may be made by journal entry - Whether payment by journal entry supported by evidence - Whether payment must have been made to other company in its capacity as responsible entity of managed investment schemes - Effect of scheme constitutions and taxation product rulings - *Equuscop Pty Ltd v Glengallan Investments Pty Ltd* (2004) 218 CLR 471 and *Re York Street Mezzanine Pty Ltd* (2007) 162 FCR 358 applied - *Rocky Castle Finance Pty Ltd v Taylor* (2014) 118 SASR 349 distinguished.

CONTRACT - Formation - Whether inferred agreement exists between companies permitting payment to be made by journal entry - Where companies in same corporate group with common directors and single operating bank account - Where financial statements of companies subject to annual directors' declarations and independent audit report - *P'Auer AG v Polybuild Technologies International Pty Ltd* [2015] VSCA 42 and *Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd* (2001) 117 FCR 424 applied.

UNJUST ENRICHMENT - Whether unjust for investors to avoid loan obligations to financier - Where investors had no knowledge of loan and scheme implementation - Where trial judge found that investors claimed tax deductions - Whether investors precluded from denying payment of application moneys by subsequent conduct - Whether requisite knowledge amounting to ratification - Whether analogy to agency law apposite - *NMFM Property Pty Ltd v Citibank Ltd (No 10)* (2000) 107 FCR 270 discussed.

COSTS - Where defendant joined to proceeding by plaintiff in response to allegations made by other defendants at trial - Where other defendants unsuccessful and ordered to pay costs of successful defendant - Whether costs order in favour of successful defendant should stand.

WORDS AND PHRASES - 'payment' - 'consideration' - 'application money' - 'in its capacity as responsible entity' - 'journal entry' - 'book entry' - 'discharge of liability' - 'inferred agreement' - 'ratification'.

White, Peter John v Timbercorp Finance P/L (in liquidation) (ACN 054 581 190); Collins, Douglas James and Collins, Janet Ann v Timbercorp Finance P/L (in liquidation) (ACN 054 581 190) and Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469)

Ferguson CJ, Santamaria and McLeish JJA

[\[2017\] VSCA 361](#)

08/12/2017

CRIMINAL LAW - Appeal - Four charges of recklessly cause injury and one charge of assault - Victim applicant's wife - Family violence over several years - 7 months and 14 days' imprisonment and 2-year CCO - Whether manifestly excessive - Leave to appeal refused.

Saxton, Sean Moore v The Queen

Santamaria and Coghlan JJA

[\[2017\] VSCA 357](#)

05/12/2017

CRIMINAL LAW - Appeal - Leave to Appeal - Sentence - Election to renew application - Attempting to possess commercial quantity of unlawfully imported border controlled drug (heroin) - Co-offender - Informer's discount - Parity - Application refused.

Tran, Thien Thi v The Queen

Osborn, Whelan, and Ashley JJA

[\[2017\] VSCA 346](#)

28/11/2017

CRIMINAL LAW - Appeal - Leave to Appeal - Sentence - Election to renew application - Rape - Recklessly cause injury - Whether sentence of five years and six months' imprisonment with a non-parole period of three years and six months manifestly excessive - Application refused.

Clyne, Nathan v The Queen

Osborn, Whelan, and Ashley JJA

[\[2017\] VSCA 350](#)

17/11/2017

CRIMINAL LAW - Appeal - Sentence - Fresh evidence - Early onset frontotemporal dementia - Undiagnosed at time of sentence - Offender now incapacitated and unaware of incarceration - Reduced life expectancy - Appeal allowed - Appellant resentenced so as to permit immediate release - R v Nguyen [2006] VSCA 184 applied.

Fedele, Salvatore v The Queen

Priest, Beach and McLeish JJA

[\[2017\] VSCA 363](#)

08/12/2017

CRIMINAL LAW - Appeal - Sentence - Intentionally cause serious injury and threat to kill - Whether sentence manifestly excessive - Parity - Co-offender convicted of recklessly cause serious injury, threat to kill and other offences - Co-offender had relevant criminal history - Appeal allowed - Resentencing - Delay - Fresh evidence - Additional hardship resulting from reinstatement of conviction - R v Wei Tang (2009) 23 VR 332 considered.

Dickman, Glyn v The Queen (No 2)

Whelan and Priest JJA, Croucher AJA

[\[2017\] VSCA 351](#)

30/11/2017

CRIMINAL LAW - Appeal - Sentence - Obtaining financial advantage by deception - Attempting to obtain financial advantage by deception - Sentence of 6 years and 3 months' imprisonment with non-parole period of 4 years - Appellant sentenced on basis that offences are continuing criminal enterprise offences - Whether sentencing judge erred in imposing automatic increase in sentences on charges the subject of continuing criminal enterprise offences - R v Arundell [2003] VSCA 69; R v Grossi (2008) 23 VR 500; and Abela v The Queen [2014] VSCA 266 considered - Ludeman v The Queen (2010) 31 VR 606 discussed - Appeal allowed - Appellant resentenced to 5 years and 10 months' imprisonment with non-parole period of 3 years and 9 months.

Shiel, Daniel v The Queen

Santamaria and Coghlan JJA

[\[2017\] VSCA 359](#)

05/12/2017

CRIMINAL LAW - Appeal - Sentence - Two charges of sexual penetration of a child under 16 (under care, supervision or authority) - Offending against step-sister in applicant's house - 9 months' imprisonment with 2-year community correction order - Objectively serious offending - Sentencing judge accepted significant mitigating factors - Whether sentence manifestly excessive - Whether judge erred by regarding breach of trust as circumstance of aggravation - Whether judge made factual finding unsupported by agreed facts - Leave to appeal refused.

Jowett, Justin (a Pseudonym) v The Queen

Santamaria and Coghlan JJA

[\[2017\] VSCA 358](#)

05/12/2017

CRIMINAL LAW - Conviction - Charge of cultivation of a commercial quantity of cannabis and other charges - Whether miscarriage of justice arises by virtue of holding the applicant to his plea of guilty when plea was not motivated by genuine acknowledgement of guilt - Whether issuable question of guilt exists regarding applicant's intention to cultivate a commercial quantity of cannabis - Appeal allowed - Applicant not adequately informed of elements of commercial cultivation offence - Applicant's plea of guilty did not evince a 'consciousness of guilt' - Conviction on charge of cultivation of a commercial quantity of cannabis quashed - New trial ordered on that charge.

Kohari, Ross William v The Queen

Weinberg and Kyrou JJA

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

01/03/2017

CRIMINAL LAW - Director's appeal against sentence - Incest and related offences - Sentenced on charge 1 (incest) to 3 years and 6 months' imprisonment - Act of sexual intercourse with 13 year old stepdaughter resulting in pregnancy - Total effective sentence 5 years and 6 months' imprisonment with non-parole period of 3 years - Appeal originally dismissed - High Court reversed decision of Court of Appeal - Remittal of appeal - Issue whether sentence on charge 1 manifestly inadequate - Appeal allowed - Respondent resentenced on charge 1 to 7 years and 6 months' imprisonment - New total effective sentence 9 years and 6 months' imprisonment with non-parole period of 6 years - Director of Public Prosecutions v Dalgliesh (2017) 91 ALJR 1063 considered.

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

Ferguson CJ, Weinberg and Whelan JJA

[\[2017\] VSCA 360](#)

07/12/2017

ESTOPPEL - Proprietary estoppel - Constructive trust - Representation by landowner that if the respondents moved into adjoining property and cared for him and his wife, he would leave them that property upon his death - Detrimental reliance - Merely a life interest in property granted under deceased's Will - Delay of more than 15 years in bringing claim - Limitation of actions - Whether judge erred in finding this was a proceeding to recover trust property and thus no limitation period applied - Whether a constructive trust arises at the time of the court's declaration, or when conduct giving rise to a trust occurs - Whether judge obliged to consider a lesser equitable remedy than imposition of a constructive trust - Whether third parties in need of protection - *Muschinski v Dodds* (1985) 160 CLR 583, *Commonwealth v Verwayen* (1990) 170 CLR 394, *Giumelli v Giumelli* (1999) 196 CLR 101, *Sidhu v Van Dyke* (2014) 251 CLR 505, *Donis v Donis* (2007) 19 VR 577 applied - *Nolan v Nolan* [2004] VSCA 109 distinguished - *Paragon Finance plc v D B Thakerar & Co (a firm)* [1999] 1 All ER 400, *Secretary, Department of Social Security v Agnew* (2000) 96 FCR 357, *Williams v Central Bank of Nigeria* [2014] AC 1189, *Varma v Varma* (2010) 6 ASTLR 152 discussed - Leave to appeal granted - Appeal dismissed - Limitation of Actions Act 1958 s8, s11, s21, s22 - Trustee Act 1958 s3.

McNab, Ian Bruce and McNab, Alistair Finlay (in their capacity as Executors and Trustees of the Will of Colin Wilbur Turner deceased) v McPhee Graham, Ian and Graham, Beth Maureen

Tate and Santamaria JJA, and Keogh AJA

[\[2017\] VSCA 352](#)

30/11/2017

PRACTICE AND PROCEDURE - Application to set aside Judicial Registrar's orders refusing extension of time to file application for leave to appeal - Length of delay, reasons for delay, prospects of success, and extent of any prejudice suffered by respondent if extension granted - Reason for delay not adequate - Little to no prospects of success of application for leave to appeal - Application dismissed.

Hewitt, Darren Edward v Count Financial Ltd (ACN 001 974 625)

Tate and Kyrou JJA

[\[2017\] VSCA 354](#)

30/11/2017

PRACTICE AND PROCEDURE - Costs - Complex and lengthy proceedings - Claim and counterclaim below - Different parties to claim and counterclaim - Where costs below made on a 'global' basis - Two 'Calderbank' offers made to plaintiff by counterclaim - Costs payable on standard basis.

He, William Jingcheng; J.C. He International Trade P/L (ACN 162 966 483); Liu, Cisely v Huang, Liangping; Top Union Business P/L (in liq) (ACN 162 966 485) (No 3)

Santamaria, Beach, and Kaye JJA

[\[2017\] VSCA 356](#)

30/11/2017

PRACTICE AND PROCEDURE - County Court judge refused application for leave to re-open applicant's case after respondent commenced no case submission - Proposed re-opening of case limited to tendering four documents that were well known to parties - Non-tender due to error by applicant's counsel - Applicable principles - Whether judge's discretion miscarried on *House v King* (1936) 55 CLR 499 grounds - Appeal allowed.

Ezra Abrahams P/L v Milburn, Vanessa

Kyrou, Kaye, and McLeish JJA

[\[2017\] VSCA 355](#)

01/12/2017

PRACTICE AND PROCEDURE - Judgments - Execution of judgment - Instalment orders - Stay of execution of judgment debt - Judgment debtor's affidavit in support of application for instalment order materially misleading - Whether primary judge erred in enjoining settlement of property sale by judgment debtor without payment of judgment debt from proceeds of sale - Judgment debt paid from proceeds of sale - Discretionary decision on question of procedure - Proposed appeal having no real prospect of success - Application for leave to appeal refused - Judgment Debt Recovery Act 1984, s5, s6, s8, s9 and s17.

Refaat, Dr Sameh v Barry, Mr Michael

Whelan and Beach JJA

[\[2017\] VSCA 362](#)

07/12/2017

PRACTICE AND PROCEDURE - Leave to appeal - Application for extension of time - Judicial registrar refused extension of time - Basis for review of decision of judicial registrar - Whether leave required for review of decision - Whether adequate reasons for delay - Whether proposed appeal devoid of merit - Whether potential prejudice to third party - Application for extension of time refused - Supreme Court (General Civil Procedure) Rules 2015 r64.08, r64.42, r84.05; *Bisognin v Hera Project Pty Ltd* [2016] VSCA 322 considered.

Leeworthy, Grant Reginald v Registrar of the Licensing Appeals Tribunal and Department of Economic Development, Jobs, Transport And Resources

Tate and McLeish JJA

[\[2017\] VSCA 353](#)

30/11/2017

PRACTICE - Costs - Non-party costs - Plaintiff company insolvent - Unable to meet order for costs - Defendant (respondent) applied for costs against applicant director - Applicant was solicitor for plaintiff company - Applicant was shareholder and creditor of plaintiff company - Whether applicant was 'real party' to litigation - Nature of applicant's role in litigation - Nature of applicant's interests in litigation - Neither role nor interest sufficient to enliven costs discretion - Adverse findings concerning applicant's conduct as solicitor - Whether relevant to discretion - Adverse findings disapproved - Appeal allowed - *Knight v FP Assets Ltd* (1992) 174 CLR 178 applied - Supreme Court Act 1986 s24(1).

Gdanski, John v Palms Court Management P/L (ACN 067 353 422); Palms Court Management P/L (ACN 067 353 422) v Gdanski, John

Maxwell P, McLeish JA, and Keogh AJA

[\[2017\] VSCA 348](#)

28/11/2017

Commercial Court

CONTRACT - Vendor and purchaser - Whether binding agreement for the sale of land - Validity of execution - Whether a conditional offer - Whether intention to be bound - Consideration - Construction of terms.

CONTRACT - Whether vendor disentitled from relying on non-compliance with condition by reason of prevention principle.

CONTRACT - Availability of specific performance - Appropriate form of order.

TRADE AND COMMERCE - Australian Consumer Law - Whether representations made and/or whether misleading or deceptive - Whether reliance in any event.

Cahill, Peter Joseph v Kiversun P/L (ACN 006 035 570); Molonglo Group (Australia) P/L (ACN 109 342 547) v Cahill, Peter Joseph and Registrar of Titles.

Kennedy J

[\[2017\] VSC 641](#)

29/11/2017

CORPORATIONS - Derivative leave application - Section 237 Corporations Act 2001 (Cth) - Consideration of delay - Whether grant of leave is in the best interests of the company - Whether application is brought bona fides - Whether serious question to be tried - Relevance of relief sought - Prima facie use of directors' power for improper purpose.

PRACTICE AND PROCEDURE - Application for adjournment of hearing of summons to re-open hearing of application for derivative leave after judgment has been reserved - Application to adjourn hand-down of judgment sine die - Adjournment granted.

PRACTICE AND PROCEDURE - Application to re-open the hearing on the grounds of 'fresh evidence' - Civil Procedure Act 2010 s49 - Whether there is the possibility of 'fresh evidence' being adduced - Whether such evidence is relevantly 'fresh evidence' - Whether such evidence is probative and could materially affect the outcome - Whether in the interests of justice to re-open the hearing - Whether evidence of a third party's interest in the proceeding 'taints' the interests of the plaintiff - Application refused.

PRACTICE AND PROCEDURE - Objection to subpoenas - Supreme Court (General Civil Procedure) Rules 2015 - Whether defendants expressly and precisely identify the legitimate forensic purpose for which access to the subpoenaed documents is sought - Whether the subpoenaed documents could assist in the defendants' application to re-open the hearing of the derivative leave application - Whether the relevant subpoenas should be set aside pursuant to r42.04 of the Supreme Court (General Civil Procedure) Rules 2015.

Slea P/L v Connective Services P/L & Ors

Robson J

[\[2017\] VSC 609](#)

29/11/2017

CORPORATIONS - Reinstatement - Corporations Act 2001 (Cth), s6001AH - Appeal from Associate Judge - No error in decision of Associate Judge to reinstate company - Applicant for reinstatement qualifies as a person aggrieved - Just in the circumstances to reinstate the company.

In the matter of Pt Cook Community Entertainment Facility P/L (ACN 123 118 187).

Between: PCCEF P/L (ACN 130 656 147) v Geelong Football Club Ltd (ACN 005 150 818)

and Australian Securities & Investments Commission

Sifris J

[\[2017\] VSC 727](#)

07/12/2017

COSTS - Special costs orders - Auswest Timbers Pty Ltd v Secretary, Department of Sustainability and Environment (No 2) [2010] VSC 513 - Gann v Hosny [2017] VSCA 318 - Whether action continued in circumstances where the defendant properly advised should have known that there was no chance of success - Failure of the defendant to address pivotal provision of the Taxation Administration Act 1997.

COSTS - Content of overarching obligations - Relevance of Model Litigant Guidelines in informing content of overarching obligations - Breach of overarching obligations sounding in costs - Civil Procedure Act 2010 s29.

COSTS - Offer of compromise made pursuant to Order 26 of the Supreme Court (General Civil Procedure) Rules 2015 - Offer not accepted - Whether non-acceptance was unreasonable - Offer not an offer to capitulate - Failure to accept offer unreasonable - North West Melbourne Recycling Pty Ltd v Commissioner of State Revenue [2017] VSC 647 - Landrow Properties Pty Ltd v Commissioner of State Revenue [2009] VSC 108 - Comaz (Aust) Pty Ltd v Commissioner of State Revenue (2015) 101 ATR 339 - Commissioner of Taxation v Clark (No 2) (2011) 197 FCR 251.

INTEREST - Supreme Court Act 1986 - Penalty Rates Interest Act 1983.

North West Melbourne Recycling P/L (ACN 087 766 514) v Commissioner of State Revenue (No 2)

Croft J

[\[2017\] VSC 726](#)

01/12/2017

JOINT VENTURE - Agreement between joint venturers - Nature of agreement - Duties arising from negotiations and transactions - Joint venture company incorporated after trading commenced - Further trading - Duties of directors - Fiduciary duties - Confidential information - Unauthorised use - Accessorial liability.

AHRKalimpa P/L (ACN 164 529 533) & Anor v Alan Hessel Schmidt & Anor

Elliott J

[\[2017\] VSC 701](#)

22/11/2017

PRACTICE AND PROCEDURE - Discovery - Inspection - Relevant document redacted in part - Objection to disclosure of redacted parts - Document claimed to be prepared in connection with an attempt to negotiate a settlement of a dispute - Requirement for evidence - Evidence Act 2008 (Vic), s131(1)(b).

ASG Group Ltd (ACN 070 045 117) v State of Victoria

Elliott J

[\[2017\] VSC 720](#)

29/11/2017

PRACTICE AND PROCEDURE - Security for costs - Whether threshold test met by Defendants - Exercise of the discretion - Effect of delay in making the application for security - Effect of forewarning of the making of an application - Whether quantum to be assessed from commencement of proceeding or at time of making application for security - Quantum of security.

More Group P/L v Czesler, Ronan; JRZ Technologies P/L (ACN 186 539 420) and Saade, Saade

Vickery J

[\[2017\] VSC 638](#)

18/10/2017

PRACTICE AND PROCEDURE - Subpoena - Client legal privilege claims over documents subpoenaed from non-parties - Evidence Act 2008 (Vic), s118 or s119 - Whether privilege sufficiently proved - Whether Court should exercise discretion to inspect documents the subject of the claim to privilege - Evidence Act 2008 (Vic), s133 - Barnes v Commissioner of Taxation (2007) 242 ALR 601; AWB Ltd v Cole (No 5) (2006) 234 ALR 651; Bailey v Department of Land and Water Conservation (2009) 74 NSWLR 333; State of Victoria v Tabcorp Holdings Ltd [2013] VSCA 180; Hancock v Rinehart [2016] NSWSC 12 referred to.

Mortgage Results P/L (ACN 080 574 170) v Millsave Holdings P/L (ACN 115 160 097) (Legal Privilege)

Derham AsJ

[\[2017\] VSC 704](#)

28/11/2017

TAXATION AND REVENUE - Land tax - Whether agreements pertaining to ski fields including significant reservations gave rise to leases or licences - Land Tax Act 2005, s10(1)(b), s79(2)(a).

LANDLORD AND TENANT - Lease or licence - Test - Right to exclusive possession - Relationship between reservations and exclusive possession - Lightwood's Treatise on Possession of Land - Lewis v Bell (1985) 1 NSWLR 731 - Swan v Uecker (2016) 50 VR 74 - Radaich v Smith (1959) 101 CLR 209 - Wik Peoples v State of Queensland (1996) 187 CLR 1 - Western Australia v Ward (2002) 213 CLR 1 - Western Australia v Brown (2014) 253 CLR 507 - Tonks v Mayor of Wellington (1908) 10 GLR 579.

Living and Leisure Australia Ltd v Commissioner of State Revenue

Croft J

[\[2017\] VSC 675](#)

01/12/2017

WINDING UP - Voidable transactions - Uncommercial transactions - Relief under Corporations Act 2001 (Cth) - Liquidator seeking to have deed of settlement releasing defendants from debt claims set aside as an uncommercial transaction - Alleged debts denied by defendants - Whether company's accounts constitute prima facie evidence of the alleged debts - Whether it may be expected that a reasonable person in the company's circumstances would have entered into deed of settlement - Held: no uncommercial transaction - Corporations Act 2001 (Cth) s588FB, s588FE, s588FF, s588FG and s1305(1) considered.

Shot One P/L (in liquidation) (ACN 096 104 808) Yeo, Andrew Reginald in his capacity as liquidator of Shot One P/L (in liquidation) (ACN 096 104 808) v Day, Richard Leonard and Rising Rocket P/L (ACN 102 373 633)

Sloss J

[\[2017\] VSC 741](#)

07/12/2017

Common Law Division

CHARTER OF HUMAN RIGHTS - Obligation under s38(1) to accord proper consideration to a relevant human right when making a decision - Whether seizure of pen pal letter in accordance with mail policy unreasonably limited freedom of expression - Whether refusal to photocopy A3 document constituted censorship of mail or unreasonable limitation of right to privacy of correspondence or freedom of expression - Whether non-delivery of a letter constituted censorship of mail or unreasonable limitation of right to privacy of correspondence or freedom of expression - Relief refused - Charter of Human Rights and Responsibilities Act 2006 s7, s13, s15(2), s38; Corrections Act 1986 s47(1)(n) and s47D.

CHARTER OF HUMAN RIGHTS - Whether prison mail officer a public authority - Governor offered to be substituted for prison mail officer as defendant - Whether prison officer a proper contradictor - Statutory responsibility for prisoner mail lies with governor - Relief refused on discretionary grounds where governor accepted responsibility - Relief granted where decision complete without proper consideration before governor attempted to assume responsibility - Charter of Human Rights and Responsibilities Act 2006 s4, s7, s13, s15(2), s38; Corrections Act 1986 s12, s47(1)(n) and s47D.

JUDICIAL REVIEW - Claims for declaratory relief - Whether seizure of pen pal letter unlawful - Whether refusal to photocopy A3 document constituted censorship of mail or unlawful application of Governor's rights in respect of prisoner mail - Whether non-delivery of a letter pending consideration of the mail procedure by the governor was unlawful - Relief refused - Charter of Human Rights and Responsibilities Act 2006 s13, s15(2) - Corrections Act 1986 s47(1)(n) and s47D.

JUDICIAL REVIEW - Claim for declaratory relief - Concession rightly made by defendant that prison mail officer returning letter and book to sender was unlawful - Declaratory relief granted - Corrections Act 1986 s47(1)(n) and s47D.

PRACTICE AND PROCEDURE - Application for extension of time to institute proceeding for judicial review - Special circumstances - Extension of time granted - Supreme Court (General Civil Procedure) Rules 2015 r56.02(1).

PRACTICE AND PROCEDURE - Application for preliminary discovery - Application refused - Supreme Court (General Civil Procedure) Rules 2015 r32.03, r32.05.

STATUTORY INTERPRETATION - Whether work instruction to a prison officer was delegation by governor - No delegation - Failure to proceed against proper defendant - Corrections Act 1986 s24.

Minogue, Craig v Dougherty, Sharelle (in her capacity as a Corrections Act 1986 Officer) and Trotter, Michael (in his capacity as a Governor of Barwon Prison) and Ryan, Brett (in his capacity as a Governor of Barwon Prison) and Dougherty, Sharelle (in her capacity as a Corrections Act 1986 Officer)

John Dixon J

[\[2017\] VSC 724](#)

06/12/2017

COSTS – Trustees – New trustee seeking trust documents from former trustee – Where former trustee provided documents after proceeding issued – Proceeding dismissed by consent – Where both trustees seek costs from the trust on a trustee basis – New trustee entitled to costs from the trust – Whether former trustee entitled to costs from the trust – Supreme Court Act 1986, s 24 – Nolan v Collie (2003) 7 VR 287 – Asta Development (Aust) Pty Ltd v Amasya Enterprises Pty Ltd [2016] VSCA 186.

Maradval P/L (ACN 616 314 222) (as trustee for the Admarval Discretionary Trust) v Admarval P/L (ACN 119 834 543)

McMillan J

[\[2017\] VSC 745](#)

08/12/2017

FAMILY VIOLENCE INTERVENTION ORDERS - Ex parte interim orders - Duty of disclosure of material facts - Whether application an abuse of process - Application to revoke or vary interim order - Applicable grounds - Withdrawal of application - No notice to respondent - Cost - Entitlement of respondent to seek costs - Family Law Act 1975 (Cth) s68N, s68R, s68T; Family Violence Protection Act 2008 s1, s2, s53, s54, s55, s57, s59, s65, s89, s90, s109, s154; Magistrates' Court (Family Violence Protection) Rules 2008 r4.08.

JUDICIAL REVIEW - Ex parte interim orders - Duty of disclosure of material facts - Whether application an abuse of process - Application to revoke or vary interim order - Applicable grounds - Withdrawal of application - No notice to respondent - Cost - Entitlement of respondent to seek costs - Family Law Act 1975 (Cth) s68N, s68R, s68T; Family Violence Protection Act 2008 s1, s2, s53, s54, s55, s57, s59, s65, s89, s90, s109, s154; Magistrates' Court (Family Violence Protection) Rules 2008 r4.08.

M N v O P and Magistrates' Court of Victoria

Ginnane J

[\[2017\] VSC 733](#)

04/12/2017

JUDICIAL REVIEW - Orders in the nature of certiorari requested pursuant to joint memorandum - Infringement offender's fines partially discharged - Infringement offender ordered to pay remaining fines in instalments and in default of payment be imprisoned - Whether Magistrate considered circumstances prescribed by s160 in exercise of discretion - Orders granted - Infringements Act 2006, s160, s161, s161A.

Bogdanovic, Radoico v Magistrates' Court of Victoria and State of Victoria

Ginnane J

[\[2017\] VSC 696](#)

27/11/2017

JUDICIAL REVIEW AND APPEALS - Appeal pursuant to Victorian Civil and Administrative Tribunal Act 1998 (Vic), s148 - Question of law - Whether there was any evidence to support a particular finding of fact - Whether Member erred in identifying and applying applicable legal test - Finding that a 23 year delay in making an application for financial assistance to the Victims of Crime Assistance Tribunal threatened the capacity of the decision-maker to make a fair decision - No error - Appeal dismissed - Victims of Crime Assistance Act 1996 (Vic), s29(2) and (3).

B F K v The Victims of Crime Assistance Tribunal

Macaulay J

[\[2017\] VSC 736](#)

06/12/2017

JUDICIAL REVIEW AND APPEALS - Ombudsman - Plaintiff sought judicial review of rejection by Ombudsman of Plaintiff's complaint - Whether leave should be granted to bring proceeding due to officer acting in bad faith - Whether bad faith arguable - Leave refused - Ombudsman Act 1973 s29.

STATUTES - Statutory interpretation - 'Governor' of a prison - Whether use of alternative title by the holder of that office was contrary to law, unreasonable or had a tendency to cause confusion and uncertainty as to jurisdiction and lawfulness of decision making processes in Victorian prison system - Corrections Act 1986.

Minogue, Craig v Gloster, Andrew (in his capacity as an Ombudsman Act Officer)

John Dixon J

[\[2017\] VSC 523](#)

06/12/2017

NEGLIGENCE - Personal injury - Plaintiff injured when struck by propellers of houseboat outboard motors - Defendant reversed houseboat when Plaintiff was behind it - Breach - Identification of risk of harm - Roads and Traffic Authority of New South Wales v Dederer (2007) 234 CLR 330; Erickson v Bagley [2015] VSCA 220 (25 August 2015) applied - Causation - Perisher Blue Pty Ltd v Nair-Smith [2015] NSWCA 90 (9 April 2015) distinguished - Contributory negligence - Civil Liability Act 2002 (NSW) s5B, s5D, s5F, s5G, s5H and s5R.

Nixon, Anton v Lines, Robert

Keogh J

[\[2017\] VSC 723](#)

29/11/2017

PRACTICE AND PROCEDURE - Release from Harman undertaking - Release from obligation under s27(1) Civil Procedure Act 2010 - Consideration of special circumstances in context of a large body of documents sought to be used - Leave granted.

Ubertas Funds Management P/L (ACN 101 997 853) v PricewaterhouseCoopers (a firm) (ABN 52 780 433 757)

Macaulay J

[\[2017\] VSC 735](#)

04/12/2017

PRACTICE AND PROCEDURE - Self-represented litigant - Application for an extension of time to file an originating motion seeking judicial review - Judge's duty to ensure fair trial by giving due assistance - Scope of duty - Whether special circumstances exist to grant the extension of time - No special circumstances - Whether case is arguable - No arguable case for judicial review - Application dismissed - Order 56.02 (1)(3) of the Supreme Court (General Civil Procedure) Rules 2015 - Antonio Madafferi v The Chief Commissioner of Police [2017] VSC 652 - Lazarevic v Victoria Police [2014] VSC 497 - David Glass (a pseudonym) v The Chief Examiner & Ors [2015] VSCA 127 - Tomasevic v Travaglini (2007) 17 VR 100.

PRACTICE AND PROCEDURE - Application for summary judgment - Whether proceeding has no real prospect of success - Proceeding has no real prospect of success - Application granted - s62, 63 Civil Procedure Act 2010 Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27.

PRACTICE AND PROCEDURE - County Court - Application for judicial review out of time as alternative to appeal - s109 of the Magistrates' Court Act 1989 - s274 of the Criminal Procedure Act 2009 - Order 56 of the Supreme Court (General Civil Procedure) Rules 2015 - Kuek v Victoria Legal Aid and anor (2001) 3 VR 289.

A B (a Pseudonym) v County Court of Victoria and Greater Shepparton City Council

Ierodiaconou AsJ

[\[2017\] VSC 740](#)

06/12/2017

TRESPASS - Trespass to land - Where defendant committed several and repeated trespasses to plaintiff's land - Appropriate remedy - Prima facie entitlement to injunction - Plenty v Dillon (1991) 171 CLR 635.

INJUNCTIONS - Quia timet injunction - Where plaintiff seeks injunction to prevent future trespass - Whether defendant likely to cause immediate and substantial damage - Where 'substantial damage' means 'real interference' with plaintiff's - rights - Whether absolute and unambiguous injunction appropriate - Mayfair Trading Co Pty Ltd v Dreyer (1958) 101 CLR 428 - Break Fast Investments Pty Ltd v PCH Melbourne Pty Ltd (2007) 20 VR 311 - Apotex Pty Ltd v Les Laboratoires Servier (No 2) (2012) 293 ALR 272; [2012] FCA 748.

DAMAGES - Appropriate measure of damages - Damages for tort compensatory - Damages must be fair and reasonable - Where plaintiff entitled to return land to condition before defendant's trespasses - Reinstatement damages awarded - Powercor Australia Ltd v Thomas (2012) 43 VR 220 - Winky Pop Pty Ltd v Mobil Refining Australia Pty Ltd [2016] VSCA 187.

Rasco P/L (ACN 004 496 244) and Lucas, John

McMillan J

[\[2017\] VSC 703](#)

28/11/2017

TRUSTS - Creation of express trusts - Three certainties - Where residue of estate bequeathed to purported express trust - Where multiple deeds of trust - Whether express trust validly created - Where no evidence of intention of settlor - Where no evidence of trust property - Where no evidence of trust beneficiaries - Byrnes v Kendle (2011) 243 CLR 253 - Harpur v Levy [2011] VSC 653 - La Housse v Counsel [2008] WASCA 207.

PRACTICE AND PROCEDURE - Where defendant died prior to closing submissions - Where no evidence before the Court as to personal representative - Administration and Probate Act 1958, s29 - Supreme Court (General Civil Procedure) Rules 2015, r9.06, r9.09, r16.03.

In the matter of the will and estate of Lauer, Elizabeth Anna Maria, deceased and In the matter of an application pursuant to r54.02 of the Supreme Court (General Civil Procedure) Rules 2015 for the determination of a question arising in the administration of the estate. Between: Corby, Ross and Anderson, George (as executors and trustees of the will and estate of Elizabeth Anna Maria Lauer, deceased) v Lyttleton, Suzanne Mary (as legal personal representative of the estate of George Nagy, deceased)

McMillan J

[\[2017\] VSC 728](#)

30/11/2017

Criminal Division

CRIMINAL LAW - Application for bail - Applicant in 'show cause' position - Multiple drugs, weapons and dishonesty related charges - Unacceptable risk of re-offending - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an application for Bail by Nguyen, Phuoc Thanh

Coghlan JA

[\[2017\] VSC 688](#)

16/10/2017

CRIMINAL LAW - Application for bail - Multiple charges of cultivating cannabis in large commercial quantities - Whether exceptional circumstances justifying grant of bail - Delay caused by applicant dismissing legal representatives multiple times - Whether unacceptable risk - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an application for Bail by Lim, Michael

Coghlan JA

[\[2017\] VSC 719](#)

16/11/2017

CRIMINAL LAW - Bail - Applicant required to 'show cause' why detention not justified - Whether unacceptable risk - Bail refused - Bail Act 1977 s4(2)(d)(i), s4(4).

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Kumar, Amit

Priest JA

[\[2017\] VSC 742](#)

06/12/2017

CRIMINAL LAW - Bail - Multiple charges - Multiple prior convictions - Prior convictions for committing indictable offences while on bail - Prior convictions for contravening court orders - Prior convictions for failing to answer bail - Show cause situation - Whether unacceptable risk - Unacceptable risk - Cause not shown - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Argyropoulos, Bill

Beach JA

[\[2017\] VSC 718](#)

27/11/2017

CRIMINAL LAW - Bail - Multiple charges - Trafficking a drug of dependence in a quantity not less than a commercial quantity - Charges of trafficking and possessing drugs of dependence, using false documents and dealing with property suspected of being the proceeds of crime - Requirement to show 'exceptional circumstances' - Whether exceptional circumstances made out - Relevance of no prior convictions and first time in custody - Relevance of availability of surety, family support and ties to jurisdiction - Strength of Crown case - Extent of delay - Exceptional circumstances not shown - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Schembri, Paul

Beach JA

[\[2017\] VSC 722](#)

29/11/2017

CRIMINAL LAW - Bail - Murder - Requirement to show 'exceptional circumstances' - Whether exceptional circumstances made out - Whether unacceptable risk of failing to answer bail - Whether unacceptable risk of further offending - Whether unacceptable risk of endangering safety or welfare of members of the public - Exceptional circumstances not shown - Unacceptable risk of failing to answer bail - Unacceptable risk of further offending - Unacceptable risk of endangering safety or welfare of members of the public - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by C D

Beach JA

[\[2017\] VSC 721](#)

28/11/2017

CRIMINAL LAW - Trial - Application for change of venue - Criminal Procedure Act 2009 s192 - Accused charged with murder - Victims are the parents of the accused - Publicity - Effect of Publicity - Whether jury unaffected by publicity could be selected - Whether fair trial can be had - Application for change of venue allowed.

The Queen v Hague, Karl Michael

Lasry J

[\[2017\] VSC 716](#)

24/11/2017

County Court of Victoria Cases

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

BUILDING CONTRACT - Final claim - Whether the principal was “in the business of building residences” - Whether the final claim was made in respect of the relevant “reference date” - Whether service of the final claim on the superintendent was service on the principal - Sections 7(2)(b), 9(2)(d) and 50 of the Building and Constructions Industry Security of Payments Act 2002 (Vic).

Maxcon Constructions Pty Ltd v Ily Australia Pty Ltd

[\[2017\] VCC 1769](#)

Judge Anderson

30/11/2017

CONTRACTS - Construction of agreement for project management services - Analysis confined to language of agreement and context - Whether fee payable in lump sum or progressively - Agency - No evidence of agency agreement or ostensible authority - Whether there can be a holding out when the existence of the principal is unknown - Assessment of interest payable.

Pomeroy Pacific Pty Ltd v Melstone Wellington Pty Ltd & Anor

[\[2017\] VCC 1699](#)

Judge Woodward

23/11/2017

CONTRACTS - Franchise agreement - Construction of franchise agreement - Grounds for termination - Whether conduct of franchisee “endangers public health or safety” - Meaning of “endanger” - Actual or threatened risk to public health or safety - Validity of termination notice - Admissibility of expert evidence - No evidence of requisite specialist knowledge - No process of reasoning revealed by expert.

Sondoananh Trading Company Pty Ltd v Couriers Please Pty Ltd

[\[2017\] VCC 1644](#)

Judge Woodward

22/11/2017

PRACTICE AND PROCEDURE - Warrant of Seizure and Sale - Application to set aside warrant - Pleadings - Sufficiency of defence and counterclaim.

Classic Finance Pty Ltd v Cielo Publishing Pty Ltd & Ors

[\[2017\] VCC 1751](#)

Judge Anderson

28/11/2017

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 - 49 year old Knocker/Slaughterman - Back injury - Termination of weekly payments at the expiration of 130 weeks on grounds he has the capacity for suitable employment as a Factory Hand, Delivery Driver or Spare Parts Interpreter.

Wilson v Tabro Meats

[\[2017\] VMC 23](#)

Magistrate S Garnett

04/12/2017

WORKERS COMPENSATION - Rejection of Claim: Psychiatric Injury: Adjustment disorder - Allegation of bullying and harassment in course of employment - Rejection of claim on grounds that bullying and harassment did not occur, that the worker did not sustain an injury which arose out of or in the course of her employment and that if she did, compensation is not payable by virtue of the operation of s40(1) of the Workplace Injury Rehabilitation and Compensation Act 2013.

Jones v Gippsland Trucks

[\[2017\] VMC 22](#)

Magistrate S Garnett

01/12/2017

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.

Courts

Judicial Commission of New South Wales - Reflections - Future directions - Core values - Sentencing consistency - Complaints handling - Inappropriate conduct - Judicial misconduct - Judicial education - NSW
Lumley, K. "Enduring values and evolving services: 30 years of the Judicial Commission." (2017) 29(10) JOB 83-94.

Online courts - Technology - Alternative dispute resolution - Stages - Digitisation - Access to justice - NZ - Democracy - Elections - Government - Compulsory voting systems - Voting rights - Right to vote - Voter turnout - Freedom of expression - Costs of voting - Australian Constitution - Voting Rights Act 1965 (US) - US - Australia
Arthur, L.C. and L. Hill. "Can online courts promote access to justice? Compulsory voting and the promotion of human rights in Australia." [2017] (November) NZLJ 356-371.

Human Rights

Accountability - Human rights violations - Procedure - Public officials - Political interpretations - Constitution - Separation of powers - Implied rights - Research study - Australia
Chappell, L. and C. Van Ham. "Democracy and human rights: a tripartite conceptual framework." (2017) 23(2) AJHR 143-167.

Administrative law - Accountability - Freedom of information - Institutional integrity - Solicitor General - Office of the Australian Information Commissioner - Australian Human Rights Commission Act 1986 (Cth) - Australia
Appleby, G. "Horizontal accountability: the rights-protective promise and fragility of executive integrity institutions." (2017) 23(2) AJHR 168-187.

Free speech - Democracy - Right to protest - Counterterrorism - Political speech - Refugees - Asylum seekers - Solicitor-General - Australian Human Rights Commission - Border Force Act 2015 (Cth) - Racial Discrimination Act 1975 (Cth) - Australia
Gelber, K. "Diagonal accountability: freedom of speech in Australia." (2017) 23(2) AJHR 188-202.

Indigenous human rights - Aboriginals - Indigenous recognition - Democracy - Racial discrimination Act 1975 (Cth) - Constitutional change - Australia
Cronin, D. "Trapped by history: democracy, human rights and justice for indigenous people in Australia." (2017) 23(2) AJHR 220-241.

International Law

Cuba - Legal system - Court system - Government structure - Foreign investment law - Legislation - Executive powers - Cuba
Grant, J. "Guide to Cuban law and legal research." (2017) 45(2) IJLI 75-188.

Jurisprudence

Legal interpretation - Legal theory - Concepts of law - Judicial power - Constitutional interpretation - Legislative interpretation - Jeremy Bentham theories - UK

Zhai, X. "Bentham on the interpretation of laws." (2017) 38(3) Legal History 282-307.

Legal Aid

Courts - Access to justice - Civil justice - Criminal justice - Court fees - Funding - R (Unison) v Lord Chancellor - Grenfell Tower tragedy - Legal Aid, Sentencing and Punishment of Offenders Act 2012 (UK) - UK

Greene, D. "All for one, & one for all?" (2017) 167 (7769) NLJ 7.

Legal History

Colonial law - Convict punishment - Role of single Magistrates - Fifty Lashes Act (UK) - Judicial reforms - Summary jurisdiction - NSW

Roberts, D. "The 'illegal sentences which magistrates were daily passing': the backstory to Governor Richard Bourke's 1832 Punishment and Summary Jurisdiction Act in convict New South Wales." (2017) 38(3) Legal History 231-253.

Legal Profession

Judges - Retirement age - Change - Return to practice - Recruitment - Judicial appointments - Judicial diversity - UK

Miller, J. "Judicial attraction fades: full-time judges could return to practice when they leave the bench." (2017) 167 (7769) NLJ 5.

INFORMATION SESSIONS

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

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

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

LIBRARY FACTS

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

Law Library of Victoria

210 William Street
Melbourne VIC 3000



About the Law Library of Victoria

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

The Law Library of Victoria builds upon this proud history and continues this role today. It provides access to authoritative legal information to ensure that the law is applied accurately, effectively and fairly.

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

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

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

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

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

The Library Bulletin is prepared within a quick turnaround time. All attempts are made to ensure accuracy, however readers are advised to verify information contained in the Library Bulletin against information from original sources. If you do see an error or omission, please contact us at llv@courts.vic.gov.au.

The Library Bulletin is provided on the basis that readers will assume full responsibility for making their own assessment of the information provided. This service does not provide legal advice. No liability will be accepted as a result of any reliance on this service.