



THE LAW LIBRARY OF VICTORIA

Library Bulletin

2 February 2018

Library News

Tour of the Supreme Court Library for legal professionals
Tuesday 27 February, 1.15pm-2.15pm

Take a tour and get to know the history, architecture and collection of the Supreme Court Library. This sixty minute tour is targeted at the legal profession, exploring all four levels of the Library and showcasing the range of current and historical resources 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.

To register for this tour please email libraryevents@supcourt.vic.gov.au

Switch On... Lexis Advance – the new look Lexis online
Thursday 1 March, 1.15pm-1.40pm

The Law Library of Victoria invites you to attend 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.

Lexis Advance is the new look platform for searching and browsing all your favourite LexisNexis online products. Come along to this Switch On session for a chance to see the new product demonstrated by a LexisNexis trainer. See how you can search all products at once, or search individual title or report series.

If you haven't seen the Lexis Advance platform, this is a great opportunity to get information and some tips and tricks on how to get the most out of it.

All are welcome and entry is free. To RSVP for this session please email libraryevents@supcourt.vic.gov.au

More information about this and other events in the Supreme Court Library can be found on our website at <http://www.lawlibrary.vic.gov.au/services/events>

SUBSCRIBE TO THE LIBRARY BULLETIN

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

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



Judging for the People: A Social History of the Supreme Court in Victoria 1841-2016 has just been published. Copies of the book can be ordered from the Supreme Court Library, please phone 03 9603 6282 for details.

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

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New Books

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

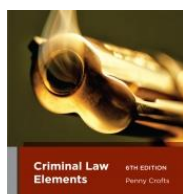
Members of the legal profession and the public can request any of the books to read on site at the Supreme Court Library.

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



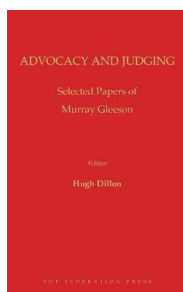
Banks, Roderick l'Anson, *Lindley & Banks on partnership*
20th ed., Sweet and Maxwell, London, 2017
Call number: 346.0682 LIN.20 (Supreme Court Library)

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



Crofts, Penny, *Criminal law elements*
6th ed., LexisNexis Butterworths, 2018
Call number: 345.94 CRO.6 (Supreme Court Library, County Court Library)

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



Dillon, Hugh (ed), *Advocacy and judging: selected papers of Murray Gleeson*
The Federation Press, Annandale, 2017
Call number: 347.014 ADV (VCAT Library)

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



Vout, Paul (ed), *Unconscionable conduct: the laws of Australia*
3rd ed., Thomson Reuters (Professional) Australia, Pyrmont, 2017
Call number: 343.07 UNC.3 (Supreme Court Library, VCAT Library)

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

Legislation

Victorian Bills

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

Victorian Assents

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

Proclamations

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

- *Building Amendment (Enforcement and Other Measures) Act 2017* No. 21/2017
 - Sections 4, 5, 13, 14, 16, 18(2)(3), 25, 28-30, 39-41, 43-48, 52, 54, 59(2), 85 of this Act came into operation on 31 January 2018 (SG443 19.12.2017)
- *Environment Protection Act 2017* No. 51/2017
 - Sections 1, 2, 4, 30-32 of this Act came into operation on 01 January 2018 (SG433 12.12.2017)
- *Fines Reform Act 2014* No. 47/2014
 - Sections 1-331 of this Act came into operation on 31 December 2017 (SG 443 29.07.2014)
- *Fines Reform Amendment Act 2017* No. 59/2017
 - Part 2 (sections 3-9), sections 113, 125, 126 of this Act came into operation on 21 December 2017 (SG443) 19.12.2017
 - Part 3 (sections 10-57) of this Act came into operation on 11 January 2018 (SG7 10.1.2018)
- *Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017* No. 38/2017
 - Part 2 (sections 3-14) of this Act came into operation on 02 January 2018 (SG416 5.12.2017)
- *Ports and Marine Legislation Amendment Act 2017* No. 55/2017
 - Sections 4, 5, 10, 12-27, 30, 31, 33, 39-51 of this Act came into operation on 31 December 2017 (SG433) 12.12.2017)
 - Sections 34-38 of this Act came into operation on 31 January 2018 (SG433 12.12.2017)
- *Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017* No. 68/2017
 - Sections 76, 121, 122 of this Act came into operation on 01 January 2018 (SG443 19.12.2017)



EXHIBITIONS IN THE LIBRARY

Argus from 100 years ago

The Supreme Court Library has the Argus newspaper from 1918 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 #argus1918

Proclamations (con't)

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

- *Corrections Legislation Further Amendment Act 2017 No. 64/2017*
 - Sections 1-4, 7-13, 15, 16, 18, 19, 21-30 of this Act came in by forced commencement on 20 December 2017 s.2(1)
- *Domestic Animals Amendment (Puppy Farms and Pet Shops) Act 2017 No. 69/2017*
 - Sections 1-3, 34, 36 of this Act came in by forced commencement on 21 December 2017 s.2(1)
- *Energy Legislation Amendment (Feed-in Tariffs and Improving Safety and Markets) Act 2017 No. 1/2017*
 - Part 2 Division 2 (sections 7-10), Parts 3-7 (sections 11-22) of this Act came in by forced commencement on 01 January 2018 s.2(3)
- *Fines Reform and Infringements Acts Amendment Act 2016 No. 29/2016*
 - Part 3, Division 4 (sections 90-95) of this Act came in by forced commencement on 31 December 2017 s.2(2)
 - Sections 107(2), 109(2), Part 4 Division 2 (section 111) of this Act came in by forced commencement on 31 December 2017 s.2(5)
- *State Taxation Acts Amendment Act 2017 No. 28/2017*
 - Part 4 (sections 50-67), Part 7 Division 5 (sections 90-92) of this Act came in by forced commencement on 01 January 2018 s.2(4)
- *State Taxation Acts Further Amendment Act 2017 No. 67/2017*
 - Parts 1, (sections 1, 2), 11 (section 81) of this Act came in by forced commencement on 19 December 2017 s.2(1)
 - Part 2 (sections 3, 4), section 6, Parts 4, 5 (sections 7-25), 8-10 (sections 27-80) of this Act came in by forced commencement on 20 December 2017 s.2(4)
- *Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017 No. 68/2017*
 - Sections 1-3, 84, 123 of this Act came in by forced commencement on 19 December 2017 s.2(1)
 - Sections 77-83, 85, 86, 109-120, 124, 125 of this Act came in by forced commencement on 20 December 2017 s.2(2)

Victorian Supreme Court Cases

Court of Appeal

COSTS - Offers of compromise - Whether costs of appeal should be awarded on an indemnity basis - Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority [No 2] (2005) 13 VR 435 applied.

McNab, Ian Bruce and McNab, Alistair Finlay (in their capacity as Executors and Trustees of the Will of Colin Wilbur Turner deceased) v Graham, Ian McPhee and Graham, Beth Maureen (No 2)

Tate, Santamaria JJA, and Keogh AJA

[\[2018\] VSCA 8](#)

01/02/2018

CRIMINAL LAW - Appeal - Conviction - Application for extension of time to appeal against conviction - Applicant convicted at trial of five charges of obtaining a financial advantage by deception - Applicant previously succeeded in appeal against sentence - Whether applicant unfit to be tried - Whether the merits of the proposed appeal warrant extension - Explanation for delay unsatisfactory - Proposed grounds of appeal lacking merit - Application for extension of time refused - Criminal Procedure Act 2009, s313 - Madafferi v The Queen [2017] VSCA 302.

Hicks, David Llewelyn v The Queen

Priest, Beach, and Niall JJA

[\[2018\] VSCA 9](#)

CRIMINAL LAW - Appeal - Conviction - Application for extension of time within which to appeal against conviction - Applicant pleaded guilty recklessly causing serious injury - Whether the merits of the proposed appeal warrant extension - Grounds of appeal have no prospects of success - Application refused - Criminal Procedure Act 2009, s313 and s276 - Madafferi v The Queen [2017] VSCA 302.

Jones, Heddwyn Alaw v The Queen

Priest, Beach, and Niall JJA

[\[2018\] VSCA 11](#)

02/02/2018

CRIMINAL LAW - Appeal - Conviction - Incest - Applicant convicted on one charge of incest - Acquittals on four other charges involving same complainant - Whether conviction unsafe - Credibility of complainant - Whether complainant had motive to lie - Whether verdicts inconsistent - Appeal dismissed.

EVIDENCE - Tendency evidence - Charged and uncharged acts - Whether evidence of uncharged acts probative of alleged tendency - Whether probative value substantially outweighed prejudicial effect - Evidence properly admitted - Evidence Act 2008 s97(1), s101(2).

CRIMINAL LAW - Appeal - Sentence - Incest - Sentence of 6 years' imprisonment with non-parole period of 4 years - Finding as to factual context - Whether reasonably open - Delay - Applicable sentencing practices - Whether sentence manifestly excessive - Plea of not guilty - Violence - Breach of trust - Appeal dismissed.

Thrussell, Andre (a Pseudonym) v The Queen

Maxwell P, Santamaria JA, and Beale AJA

[\[2017\] VSCA 386](#)

20/12/2017

CRIMINAL LAW - Appeal - Sentence - Indecent act with or in the presence of a child (two charges) - Sentences of three years' imprisonment on each charge - Cumulation two years - Total effective sentence of five years' imprisonment with non-parole period of three years and three months - Whether sentence manifestly excessive - Appeal allowed - Resentenced to a total effective sentence of 30 months' imprisonment with non-parole period of 18 months.

Moore, Brad (a Pseudonym) v The Queen

Priest and Santamaria JJA

[\[2018\] VSCA 2](#)

30/01/2018

CRIMINAL LAW - Appeal - Sentence - Reckless conduct endangering serious injury, dangerous driving causing death and serious injury, failing to stop motor vehicle after an accident that caused death and serious injury - Whether sentences for reckless conduct endangering serious injury and for failing to stop manifestly excessive - Whether errors in orders for cumulation - Whether double punishment on charges of failing to stop - Leave to appeal refused - Road Safety Act 1986 (Vic) s61 - Criminal Procedure Act 2009 (Vic) s280(1) and s281(1).

Vasilevski, Steven v The Queen

Priest and Santamaria JJA

[\[2018\] VSCA 7](#)

02/02/2018

CRIMINAL LAW - Appeal against sentence - Negligently causing serious injury by driving - 3 years' imprisonment - Applicant assessed as suitable for community correction order - Whether judge sentenced applicant on factual basis other than that agreed by parties - Whether judge denied applicant procedural fairness - Whether judge erred in finding that community correction order was not an appropriate sentencing disposition - Whether sentence manifestly excessive - Leave to appeal refused.

Gurovski, John v The Queen

Whelan JA and Kyrou JA

[\[2018\] VSCA 3](#)

01/02/2018

CRIMINAL LAW - Appeals against sentence - Guilty pleas to trafficking in small quantity of ice and other charges - Sentence of 3 years' imprisonment for trafficking charge - Crown concession that sentence manifestly excessive - Appeals allowed - Appellants resentenced to 2 years' imprisonment for trafficking charge.

Nawar, Daniel v The Queen; Turkozu, Metin v The Queen

Whelan and Kyrou JJA

[\[2018\] VSCA 6](#)

02/02/2018

CRIMINAL LAW - Application for leave to appeal sentence - Recklessly causing serious injury - Sentence of 6 years' imprisonment - Non-parole period of 4 years and 6 months - Fresh evidence - Applicant permitted to rely on fresh evidence of intellectual disability - Countervailing considerations raised by fresh evidence - Application for leave to appeal granted - Appeal dismissed as no different sentence should be imposed - Muldrock v The Queen (2011) 244 CLR 120, R v Verdins (2007) 16 VR 269 and Veen v The Queen [No 2] (1988) 164 CLR 465 applied.

Al Wahame, Mohammad v The Queen

Whelan JA and Kyrou JA

[\[2018\] VSCA 4](#)

01/02/2018

CRIMINAL LAW - Sentence - Appeal - Recklessly causing serious injury - Delay - Whether sentencing judge denied full benefit of mitigation - Rehabilitation during period of delay - Error established - Appeal dismissed.

Pang, John v The Queen

Priest and Santamaria JJA

[\[2018\] VSCA 5](#)

02/02/2018

PRACTICE AND PROCEDURE - Appeal - Application for stay of execution of judgment - Respondent entered into litigation funding agreement with third party - Third party entitled to judgment sum - Respondent potentially liable to pay significant costs of County Court proceedings if appeal successful - Applicant offered to pay judgment sum into court - Expedited hearing of appeal - Stay granted.

Civil and Allied Technical Constructions P/L (ACN 077 924 120) v A1 Quality Concrete Tanks P/L (ACN 095 210 683)

Tate JA and McDonald AJA

[\[2018\] VSCA 12](#)

01/02/2018

PRACTICE AND PROCEDURE - Case transfer - Supreme Court to County Court - Claim for equitable relief - Amendment to add claim for statutory compensation - Statutory claim outside Supreme Court's jurisdiction - Application for administrative transfer - Prothonotary under statutory duty to transfer - Whether Judge had power to prevent transfer - No power - Appeal allowed - Courts (Case Transfer) Act 1991 s26; Civil Procedure Act 2010 s7, s8, s29, s47.

Miller, Daniel v Miller, Graeme and Graeme Miller Wines P/L

Maxwell P and Kyrou JA

[\[2018\] VSCA 1](#)

24/01/2018

PRACTICE AND PROCEDURE - Judgments, declarations and orders - Repayment of judgment sum following successful appeal - Interest - Interest on judgment sum repayable following successful appeal - Rate of interest - Whether successful appellant entitled to interest at penalty rates - Whether successful appellant only entitled to interest at restitutionary rates - Supreme Court Act 1986, s58, s60 and s101.

MLC Nominees P/L and MLC Ltd v Daffy, Kevin Adrian (No 2)

Beach and McLeish JJA

[\[2018\] VSCA 10](#)

02/02/2018

Commercial Court

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Principles of statutory construction considered.

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether a special purpose vehicle 'in the business of building residences' - Section 7(2)(b) of the Act considered - Whether the Act applies - Plaintiff is 'in the business of building residences'.

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether the maximum extension of time permitted under s22(4) of the Act is a further 5 days or a further 15 days - Maximum permitted extension of time is a further 5 days.

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether an adjudication determination given after the period permitted under s22(4) of the Act is invalid - Out of time determination is not invalid - Requirements of s22(4) of the Act not jurisdictional.

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether a payment claim under s14 of the Act may include the value of work performed before an earlier reference date - A person entitled to a progress payment, which is calculated by reference to a reference date under s9 of the Act, may include the value of work performed before the previous reference date.

Ian Street Developer P/L (ACN 606 629 323) v Arrow International P/L (ACN 081 136 352) and Smith, Jonathan

Riordan J

[\[2018\] VSC 14](#)

31/01/2018

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Whether an adjudication determination given after the period permitted under s22(4) of the Act is invalid - Out of time determination is not invalid - Requirements of s22(4) of the Act not jurisdictional.

BUILDING CONTRACTS - Building and Construction Industry Security of Payment Act 2002 (Vic) - Agreement to an extension und s22(4) of the Act - Whether claimant's offer to agree to an extension of time constituted an implied agreement - No implied agreement for extension of time.

PHHH Investments No 2 P/L v United Commercial Projects P/L (ACN 110 860 360) and McIver, Harry

Riordan J

[\[2018\] VSC 15](#)

31/01/2018

DECLARATORY RELIEF - Challenge to the jurisdiction of the Victorian Civil and Administrative Tribunal to continue to deal with applications - Whether Domestic Building Contracts Act 1995 applies to a 'residential hotel' development - Availability of injunctive relief to restrain the Victorian Civil and Administrative Tribunal from continuing to deal with a matter beyond jurisdiction - Domestic Building Contracts Act 1995, s3, s4, s5, s6, s8, s9, s53 and s54. INJUNCTION - Restraining the Victorian Civil and Administrative Tribunal - Want of jurisdiction to deal with disputes in relation to building works which are excluded from the Domestic Building Contracts Act 1995 as a 'residential hotel'.

H Buildings P/L (ACN 091 236 912) formerly Hickory Group P/L v Owners Corporation 1 PS537642N & Ors (according to attached Schedule of Parties)

Digby J

[\[2017\] VSC 802](#)

22/12/2017

DISCOVERY - Discovery of documents - Commercial litigation - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r29.08 - Civil Procedure Act 2010 (Vic), s7, s26.

Cargill Australia Ltd v Viterra Malt P/L (No 4)

Elliott J

[\[2017\] VSC 797](#)

20/12/2017

LEASES AND TENANCIES - Provisions with respect to the payment of outgoings - Construction - Rectification - Acquiescence - Laches - Account stated - Limitation of actions - Recovery of moneys on the basis of claimed underpayments - Mount Bruce Mining v Wright Prospecting Pty Ltd (2015) 256 CLR 104 - Westpac Banking Corporation v Tanzone Pty Ltd (2000) 9 BPR 17, 521 - Simic v NSW Land & Housing Corp (2016) 339 ALR 200 - Maralinga Pty Ltd v Major Enterprises Pty Ltd (1973) 128 CLR 336 - Byrnes v Kendle (2011) 243 CLR 253 - Commonwealth Dairy Produce Equalisation Committee Ltd v McCabe (1938) 38 SR (NSW) 397 - Bank of New South Wales v Brown (1983) 151 CLR 514 - Hampton Gold Mining Areas Ltd v Metals Exploration Ltd (1995) 17 WAR 30 (FC).

Perpetual Ltd (ACN 000 431 827); Bridgehead P/L (ACN 006 082 515); Vicinity Funds Re Ltd (ACN 084 098 180) v Myer P/L (ACN 004 143 239)

Croft J

[\[2018\] VSC 2](#)

29/01/2018

LEGAL PRACTITIONERS - Solicitors - Conflict - Application to restrain solicitor from acting - Administration of justice and appearance of justice - Actual conflict - Need for informed independent advice - Proportionality of costs - Civil Procedure Act 2010 (Vic), s24(a) and (b) - Legal Profession Uniform Law Application Act 2014 (Vic), sch 1, s419, s423(2)(c) - Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, r11.3, Legal Profession Uniform Conduct (Barristers) Rules 2015, r119.

Ji, Kuifu (Jeffrey) v Bluestars Real Estate P/L (ACN 141 183 548) & Ors

Elliott J

[\[2018\] VSC 11](#)

31/01/2018

PRACTICE AND PROCEDURE - Discovery - Defendants seeking approval to commence proceeding for discovery pursuant to 28 USC § 1782 - Context in which application is made - Civil Procedure Act 2010 (Vic), s7.

Cargill Australia Ltd v Viterra Malt P/L (No 5)

Elliott J

[\[2017\] VSC 798](#)

20/12/2017

TAXATION - Dutiable property - Goods in Victoria subject to arrangements which include dutiable transaction over estate or interest in land - Exception with respect to goods held or used in connection with primary production - Re Nanaimo Community Hotel Ltd [1945] 3 DLR 225 - Berry v FCT (1953) 89 CLR 653 - G Gramp & Sons Ltd v FCT (1965) 115 CLR 170 - Our Town FM Pty Ltd v Australian Broadcasting Tribunal (1987) 16 FCR 465 - Burswood Management Ltd v Attorney-General (Cth) (1990) 23 FCR 144 - R v Novakovic (2007) 17 VR 21 - Duties Act 2000 s3(1) and s10(1).

Central Park Estate (Vic) P/L (ACN 086 966 944) v Commissioner of State Revenue

Croft J

[\[2018\] VSC 1](#)

23/01/2018

Common Law Division

ADMINISTRATIVE LAW - Judicial Review and Appeals - Supreme Court (General Civil Procedure) Rules 2015, order 56 - Medical panel - Jurisdictional error - Procedural fairness - Whether the Panel took account of irrelevant matters or failed to consider relevant matters - Whether Panel reached conclusions that were not open to it - Whether plaintiff's injuries are consistent with an injury of a psychogenic nature.

Nestorovic, Ljiljana v Rowe, Professor Leanne; Brand, Dr Caroline; Bourke, Mr John; Malios, Dr John and Multicultural Aged Care Services P/L

Keogh J

[\[2017\] VSC 787](#)

20/12/2017

CAVEATS - Application for removal of a caveat under s90(3) of the Transfer of Land Act 1958 (Vic) ('TLA') - Caveat lodged by defendants pursuant to claim of leasehold interest in the property - Whether any serious question to be tried that defendants had a caveatable interest - No serious question to be tried established - Balance of convenience favours removal of caveat - Caveat not to be used as a 'bargaining chip' to secure a claim for damages - Order for removal of caveat made - Costs awarded in favour of plaintiff - *Yamine v Mazloum* [2017] VSC 601, referred to.

PRACTICE AND PROCEDURE - Whether VCAT proceeding concurrently on foot seeks to substantiate the interests alleged in the caveat - Whether this application amounts to an abuse of process in circumstances where the VCAT proceeding results in a finding that the relevant claim is untenable - Relevant claims in VCAT proceeding informally struck out by Tribunal Member - Discretion of court to scrutinise merits of any separate proceeding relied upon by caveator in determining the threshold issue - *Yuksels Nominees Pty Ltd v Nguyen & anor* [2015] VSC 663, distinguished - VCAT not a 'court' within the meaning of s90(3) of the TLA - No abuse of process - TLA s89A(7) - Section 7 of Civil Procedure Act 2010 (Vic).

Van Klaveren, James John v Otelta P/L (ACN 115 860 814); Sleep Overs Group P/L (ACN 612 184 728) and The Registrar of Titles

Daly AsJ

[\[2018\] VSC 10](#)

23/01/2018

CONTRACT - Construction - Written agreement - Language susceptible of more than one meaning - Second and third mortgagee purchased land at public auction from first mortgagee in possession - Purchasers entered agreement with previous proprietor to continue development of the land - Profit share arrangement - Whether previous proprietor was a joint venturer or merely a development manager - Whether second mortgagee breached agreement by accepting repayment of mortgage loan from receiver after auction - *Electricity Generation Corporation (t/a Verve Energy) v Woodside Energy Ltd* (2014) 251 CLR 640 applied.

CONTRACT - Termination - Inability to obtain construction finance to complete development - Whether a contractual obligation is incapable of being performed - *Shevill v Builders Licencing Board* (1982) 149 CLR 620 applied - Frustration - Common assumption that construction finance could be obtained - *Codelfa Constructions Pty Ltd v State Rail Authority of NSW* (1982) 149 CLR 337 applied - Breach - Purchasers entered a second agreement with a new syndicate of investors to complete development - Whether first agreement was breached.

EQUITY - Fiduciary duties - Solicitor-client relationship - Second mortgagee had acted for previous proprietor for many years as solicitor - Whether the retainer was terminated prior to auction when solicitor purchased client's land - Whether the solicitor should have advised his client to receive independent legal advice - Whether the solicitor had a conflict of interest in drafting the agreement entered into with the client - Whether any loss or damage was suffered - Whether the solicitor entering into the second agreement involved a breach of fiduciary duties owed to his former client.

Loustas, Arthur v Sier, Peter John; Sier, Vincent John and 405 High Street P/L (ACN 158 418 565)

Macaulay J

[\[2018\] VSC 13](#)

31/01/2018

COSTS - Applications for costs of summonses before Associate Judge and notices of appeal from decision of Associate Judge - Where nature of proceeding changed and alleged grounds of error did not fall for determination - Held: no order as to costs.

COSTS - Duplication of representation - Where two parties sought to represent the deceased estate of a party - Where parties made complementary submissions - Whether double representation necessary - Held: unsuccessful applicant to bear own costs.

COSTS - Applications for relief upon alleged contraventions of Civil Procedure Act 2010 - Identification of costs thrown away - Where the issue of an amended certificate of finality by the Prothonotary rendered extant appeals futile - Where legal practitioners failed to inform the Court of the issue of the amended certificate in a timely manner - Where the change in the nature of the proceeding enabled the Court to hear and determine the real issues in dispute - Held: costs incurred in preparing for appeals only partially thrown away.

Talacko, Jan (as Executor of the Estate of Helena Marie Talacko); Bennett, Alexandra; Talacko, Martin; Talacko, Rowena and Talacko, Margaret Helen Beatrice v Talacko, Jan Emil Sloss J

[\[2017\] VSC 804](#)

22/12/2017

COSTS - Caveat removal - Alleged fraudulent removal of caveat - Notice of Action by Registrar of Titles - Section 106(1)(f) of the Transfer of Land Act 1958 (Vic) - Priority of interests - Priority of second mortgagee over caveator - Costs - Indemnity costs - Liability of the Registrar for costs - Section 24(1) of the Supreme Court Act 1986 (Vic) - Section 65C(1) of the Civil Procedure Act 2010 (Vic).

Lee Nyong P/L & Anor v Di Blasi & Anor (Costs Ruling)

J Forrest J

[\[2018\] VSC 5](#)

15/01/2018

COURTS - Appeal from decision of Children's Court Magistrate in respect of condition to vaccinate children imposed in the best interests of the child as part of interim accommodation order pursuant to s263(7) of the Children Youth and Families Act 2005 - Whether decision beyond power or otherwise misconceived nature and scope of power - Whether power extends to making decisions with significant long-term consequences for child - Appeal dismissed.

HUMAN RIGHTS - Best interests of the child - Charter of Human Rights and Responsibilities Act 2006 considered.

STATUTORY INTERPRETATION - Meaning of 'any condition' for the purpose of s263(7) of the Children Youth and Families Act 2005.

Z D v Secretary to the Department of Health and Human Services & Anor

Osborn JA

[\[2017\] VSC 806](#)

22/12/2017

DEFAMATION - Imputations - Defamatory words - Justification - Defamation Act 2005 (Vic) s25 - Evidence Act 2008 (Vic) s69, s135 - Registered Training Organisation - Victorian Training Guarantee - Unscrupulous conduct - Failure to comply with quality standards - Business Records - Records kept by a statutory body - What constitutes a business record - Admission of evidence which may be unfairly prejudicial - Probative value outweighs unfair prejudice.

Charan, Atkinson Prakash v Nationwide News P/L (ACN 008 438 828)

J Forrest J

[\[2018\] VSC 3](#)

25/01/2018

ELECTIONS - Duty and powers of Victorian Electoral Commission - Commission's powers and responsibilities - Register of electors - Objections to enrolment - Principal place of residence - Electoral Act 2002 (Vic) s21, s22(1), s23, s26, s27, s38(4), s42(1), s138.

LOCAL GOVERNMENT - Local government elections - Residency entitlement to stand for election as a councillor - Whether candidate can only nominate in the ward in which the candidate resides - Entitlement to vote in municipal elections - Conclusivity of register of electors - Objection not sustained - Local Government Act 1989 (Vic) s11-15, s28(1), s28(1AA), s45, sch 2 cl 6(3A).

JUDICIAL REVIEW - Appeal on questions of law from decision of Victorian Civil and Administrative Tribunal on appeal from Municipal Electoral Tribunal - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148.

Victorian Electoral Commission v Municipal Electoral Tribunal and Iser, Rose Mary

Garde J

[\[2017\] VSC 791](#)

21/12/2017

FAMILY PROVISION - Where testator made limited provision for widow and no provision for adult daughter - Where further provision ordered for widow on interim basis - Adequate provision for proper maintenance and support - Where widow and adult daughter dutiful and exemplary - Whether adult daughter adequately provided for during testator's life - Administration and Probate Act 1958, s90, s91, s91A and s97.

In the matter of Part IV of the Administration and Probate Act 1958 and In the matter of the estate of McKenzie, David Cyril, deceased. Between McKenzie, Aileen Moira and Harris, Faye Ada v McKenzie, David Gordon and McKenzie, Lynton Henry (as executors of the will of David Cyril McKenzie, deceased)

McMillan J

[\[2017\] VSC 792](#)

21/12/2017

INTERPRETATION OF STATUTES - Whether State authorities have power to give notice to fix building work under s37B of the Building Act 1993 after a certificate of final inspection or an occupancy permit has been issued - No such power - Declaration made accordingly - Building Act 1993, s1, s3, s4, s7, s9, s10, s16, s16B, s17, s19, s20, s21, s33, s34, s35, s36, s37, s37A, s37B, s37C, s37D, s37E, s37F, s37G, s37H, s37HA, s37I, s37J, s37K, s38, s39, s40, s41, s42, s43, s45, s46, s102, s103, s106, s108, s111, s118, s118A, s119, s129, s134, s138A, s146, s178, s179, s197, s198, s227A, s227B, s227C, s228, s229, s231E, s253, s273, Schedule 8.

L U Simon Builders P/L; Moschoyiannis, Jim; Matera, Frank v Victorian Building Authority

Cavanough J

[\[2017\] VSC 805](#)

22/12/2017

JUDGMENTS ORDERS AND DECLARATIONS - Application for declaration in default of defence - Declaration sought on deemed admissions - Absence of contradictor - Whether declaration ought be made - Supreme Court (General Civil Procedure Rules) 2015, r21.04.

Bass Coast Shire Council v Hollole, Helen Graham

Mukhtar AsJ

[\[2017\] VSC 803](#)

22/12/2017

JUDICIAL REVIEW AND APPEALS - Application for leave to appeal pursuant to Section 148 of the Victorian Civil and Administrative Tribunal (VCAT) Act 1998 (Vic) - Plaintiff transferred payments to third party pursuant to online scam via defendant's kiosk in a convenience store - Defendant not liable for the loss suffered by plaintiff - Whether the Tribunal Member applied the correct legal test to determine the standard of reasonable care required by the defendant - Wyong Shire Council v Shirt (1980) 146 CLR 40, referred to - Whether the Tribunal Member's findings were open to make on the evidence - Whether plaintiff's challenges amounted to impermissible merits review - No arguable case that Tribunal Member erred in identifying applicable legal test - Tribunal Member's findings open to make on the evidence - Secretary to Department of Premier and Cabinet v Hulls [1999] 3 VR 331, referred to - Myers v Medical Practitioners' Board of Victoria (2007) 18 VR 48, referred to - Application dismissed.

Maynard, Christine Anne v MoneyGram Payment Systems Inc

Daly AsJ

[\[2018\] VSC 7](#)

31/01/2018

JUDICIAL REVIEW AND APPEALS - Application for leave to appeal pursuant to Section 148 of the Victorian Civil and Administrative Tribunal (VCAT) Act 1998 (Vic) - Finding by Deputy President that funds advanced by applicants to respondent's bank account did not constitute a loan - Adverse findings on credibility of applicants' witnesses by Deputy President - Whether failure of Deputy President to provide a legal characterisation for the transaction constitutes an error of law or amounts to inadequate reasons - Whether an appellate court can entertain or consider arguments on claims not advanced at first instance - Whether Deputy President arguably erred in failing to characterise payments as money had and received - No prima facie case established for an arguable error of law or inadequate reasons - Secretary to the Department of Premier and Cabinet v Hulls [1999] 3 VR 331, applied; Gaycel Pty Ltd v Heski Carpenters Pty Ltd [2017] VSC 450, referred to - Casdar Pty Ltd v Fanous [2017] VSC 616, referred to - Cosmopolitan Hotel (Vic) Pty Ltd v Crown Melbourne Limited [2014] VSCA 353, referred to - Application for leave to appeal dismissed.

PRACTICE AND PROCEDURE - Procedural fairness - Self-represented applicants whose native language was not English - Whether translation inadequacies affected Deputy President's assessment of witness credibility - Whether Deputy President sufficiently accommodated applicants' circumstances so as to afford natural justice - Whether hearing a six day trial over four months amounts to procedural unfairness - No procedural unfairness - Application of Sections 97 and 98 of VCAT Act 1998 (VIC) - Shaw v Gadens Lawyers [2010] VSC 7, referred to.

PRACTICE AND PROCEDURE - Application for removal of affidavit from Court file pursuant to Rule 27.07 of Supreme Court (General Civil Procedure) Rules 2015 - Affidavit filed without leave - Irrelevant to determination of issues in appeal - Scandalous and defamatory material - Application for removal of affidavit from Court file granted.

CONTRACT - Whether an IOU document creates or merely evidences a liability from a debtor to a creditor - Thomas v Hollier (1984) 156 CLR 152, applied.

Wei, Chen and Xia, Qi Yun v Yu, Na

Daly AsJ

[\[2018\] VSC 6](#)

31/01/2018

JUDICIAL REVIEW - Dispute between building owners and architect - Owners' damages claim and architect's fees counterclaim in Magistrates' Court - Owners' application for stay of Magistrates' Court proceeding on basis that VCAT had jurisdiction to determine domestic building dispute - Stay application dismissed - Whether jurisdictional error - Whether error of law on face of record - Whether judicial review remedies should be refused in exercise of discretion - Domestic Building Contracts Act 1995 s1, s4, s5, s6, s54, s57, s57A.

STATUTES - Interpretation - Use of endnotes - Whether 'must' imperative - Domestic Building Contracts Act 1995 s6, s57.

Radojevic, Dragan and Radojevic, Ivana v JDA Design Group P/L (trading as JDA Architects) (ACN 129 609 008) and Magistrates' Court of Victoria

Ginnane J

[\[2017\] VSC 796](#)

21/12/2017

JUDICIAL REVIEW - Supreme Court (General Civil Procedure) Rules 2015, Order 56 - Application in the nature of certiorari and mandamus - Extension of time within which to commence proceeding - Special circumstances required - No special circumstances disclosed - No arguable case for judicial review - Application dismissed.

Sarikaya, David v Swinburne University of Technology

Derham AsJ

[\[2018\] VSC 17](#)

01/02/2018

JUDICIAL REVIEW - Whether defendant required to accord procedural fairness in determining whether to impose a 12 month ban on prisoner's wife from visiting all prisons - Ban imposed under s43(1A) Corrections Act 1986 - Whether decision made in absence of reasonable grounds - Whether grant of relief futile whether extension of time warranted - Supreme Court (General Civil Procedure) Rules 2005 056 - Declaration granted - Extension of time refused.

A S v Secretary to the Department of Justice and Regulation

Jane Dixon J

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

05/06/2017

REAL PROPERTY - Caveat - Caveator lacking caveatable interest - Claim for compensation for lodging caveat without reasonable cause - Applicable principles - Proof of causation of damage - Transfer of Land Act 1958 (Vic), s118.

KB Corporate P/L v Sayfe, Simon (also known as Simon Houry) and Registrar of Titles

Mukhtar AsJ

[\[2017\] VSC 623](#)

22/12/2017

REAL PROPERTY - Caveats - Application for removal of caveat - Transfer of Land Act 1958 s90(3) - No caveatable interest - Application by caveator for freezing order - Whether evidence to support application - Whether application made to provide security for potential claim - Application dismissed - Deputy Commissioner of Taxation v AES Services (Aust) Pty Ltd [2009] VSC 418 applied.

Tieri, Silvana v Ferguson, Dean John and Registrar of Titles

Keogh J

[\[2017\] VSC 799](#)

20/12/2017

WILLS AND ESTATES - Application by a contingent beneficiary for declarations - Supreme Court (General Civil Procedure) Rules 2015 (Vic) Order 54, r54.02 - Standing - Whether contingent beneficiary has standing under r54.02.

PRACTICE AND PROCEDURE - Application for summary dismissal by executor - Civil Procedure Act 2010 (Vic) s63 and s64 - Asserted ground for summary dismissal that plaintiff has no standing under r54.02 - Application disallowed.

Daicos, Shamima v Daicos, Phillip (who is sued as the Trustee of the Will and Estate of Alexandra Daicos, deceased) and Daicos, George

Ierodiaconou AsJ

[\[2018\] VSC 18](#)

01/02/2018

Criminal Division

CRIMINAL LAW - Application for bail - Murder and alternative charges - Direct indictment following discharge at committal - Whether exceptional circumstances justifying grant of bail - Bail refused.

In the matter of the Bail Act 1977 and In the matter of an application for Bail by Russo, Angelo Pat

Coghlan JA

[\[2017\] VSC 775](#)

21/12/2017

CRIMINAL LAW - Application for bail - Show cause - Applicant charged with indictable offences whilst on bail - Charges of burglary, theft, possession of methylamphetamine and breach of bail conditions - Whether unacceptable risk of failing to answer bail and committing further offences while on bail - Long standing drug addiction - Offer of place in residential rehabilitation program at Odyssey House - Bail Act 1977 (Vic), s3A, 4(2), (4)(a) and (d) - Bail granted.

In the matter of the Bail Act 1977 (Vic) and In the matter of an Application for bail by Ezzy, Karen

J Forrest J

[\[2018\] VSC 4](#)

11/01/2018

CRIMINAL LAW - Application for bail - Whether the applicant is an unacceptable risk - Charges of extortion, theft and possessing a controlled and/or prohibited weapon - Bail Act 1977 (Vic), s4(2)(d) - Bail granted on conditions - Geographical limitation on the applicant's movements whilst on bail.

In the matter of the Bail Act 1977 (Vic) and In the matter of an Application for Bail by Vincent, Yoshaan

J Forrest J

[\[2018\] VSC 9](#)

25/01/2018

CRIMINAL LAW - Murder - Guilty plea - Contested facts as to role of offender - Whether Crown case that offender planned, promoted and prepared for crime and wielded machete capable of proof beyond reasonable doubt - Whether there is mitigation established on offender's account of diminished role in the events.

The Queen v Worthy, Samuel (Ruling on Factual Matters)

Jane Dixon J

[\[2017\] VSC 808](#)

03/11/2017

CRIMINAL LAW - Murder - Guilty plea - Sentence following contested plea - Three friends involved in attack with machete against fourth friend - Key role in the joint offence - Absence of remorse - Youth - Consideration of parity with older offender - Sentenced to 20 years in prison, with a non-parole period of 16 years.

The Queen v Worthy, Samuel (Sentence)

Jane Dixon J

[\[2018\] VSC 12](#)

30/01/2018

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Arson - Accused (aged 45) mistakenly perceived a sexual advance while helping his neighbour (aged 79) and then bashed him in his own home - Accused then burned down house with neighbour (believed dead) still inside - Very serious examples of manslaughter and arson - Commenced as murder trial but jury discharged and new indictment filed over - Pleas of guilty - Limited remorse - Depressing criminal history - Only fair prospects of rehabilitation - Sentence of eleven years' imprisonment for manslaughter, five years' imprisonment for arson - After cumulation, total effective sentence of thirteen years' imprisonment with non-parole period of ten years - But for pleas of guilty, sentence of sixteen years' imprisonment with non-parole period of thirteen years - Sentencing Act 1991 (Vic), s5, s6AAA & s18.

The Queen v McKnight, Stuart Matthew

Croucher J

[\[2017\] VSC 782](#)

22/12/2017

CRIMINAL LAW - Sentence - Murder - Rape - Pleas of Guilty - Victim a child chosen at random - Offending occurred in 1984 - Prisoner now aged 75 years - Denial of involvement - Claimed absence of memory of offences - Absence of - Custodial conditions - Prisoner attacked and injured in custody - Extra curial punishment - Denunciation - Just punishment - General deterrence - Specific deterrence less significant - Sentence of life imprisonment - Non-parole period fixed - Considerations in fixing - Mercy.

The Queen v Davies, Gregory Keith

Lasry J

[\[2017\] VSC 800](#)

21/12/2017

EVIDENCE - Public interest immunity - Accused is charged with murder - Defence of self-defence - Matters of State - Evidence Act 2008 s130, s130A.

The Queen v Yucel, Kamil

Beale J

[\[2017\] VSC 807](#)

21/12/2017

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.

APPLICATION TO SET ASIDE JUDGMENT - Where judgment was given in 2014 for possession of properties - Where application made by non-parties to set aside the judgment - Whether the non-parties have standing to make the application to set aside.

JUDGMENT - SETTING ASIDE - FRAUD - Where judgment for possession of properties - Whether mortgagee has indefeasible title under s42(1) of the Transfer of Land Act 1958 - Where allegation judgment procured by fraud.

NOTICE TO ATTORNEYS-GENERAL - Whether matter arising under the constitution or involving its interpretation - Whether clause 78B(1) of the Judiciary Act 1903 precludes the proceeding from continuing until the Attorneys-General of the Commonwealth and States have indicated if they want to intervene.

ANZ Banking Group Ltd v Banksea Pty Ltd & Anor

[\[2017\] VCC 1852](#)

Judge Marks

13/12/2017

CONTRACT - Loan made by stepmother to stepson - Whether loan forgiven - Document purporting to record forgiveness of loan not in form of deed - Consideration required for forgiveness of loan - Dobrinski v Slade [2010] NSWDC 297 - Judgment for plaintiff.

Polacsek v Patek

[\[2018\] VCC 24](#)

Judge Marks

1/2/2018

CRIMES CONFISCATION - Proceeds of crime - Application for a restraining order pursuant to s25, s18 and s19 of the Proceeds of Crime Act 2002 (Cth).

Commissioner of the Australian Federal Police v Safadi & Ors (Ruling)

[\[2017\] VCC 1913](#)

Judge Misso

21/12/2017

DEFAMATION - Judgment in default of appearance - Assessment of damages.

Huang v Zhi & Anor

[\[2017\] VCC 1990](#)

Judge Smith

22/12/2017

LIABILITY ONLY - Torts - Transport Accident.

Friedmann v Transport Accident Commission (Liability Only)

[\[2017\] VCC 1865](#)

Judge Saccardo

12/12/2017

PRACTICE AND PROCEDURE - Stay of proceedings sought - Appropriate forum for dispute to be litigated - Section 20 Service and Execution of Process Act 1992 (Cth) - Proceeding stayed.

L&H Group v Edwards

[\[2018\] VCC 23](#)

Judge Marks

1/02/2018

STATUTORY INTERPRETATION - Domestic building dispute - Meaning of 'if a person starts any action arising wholly or predominantly from a domestic building dispute' - Where action instituted by plaintiffs against defendants does not arise wholly or predominantly from a domestic building dispute - Where third party claim brought by defendants against third party does arise wholly or predominantly from a domestic building dispute - Whether action must be stayed under s57(2) Domestic Building Contracts Act 1995 (Vic).

Moraca & Ors v Allabadi & Ors

[\[2017\] VCC 1853](#)

Judge Marks

15/12/2017

TESTATOR'S FAMILY MAINTENANCE - Application under Administration and Probate Act 1958 (Vic) Part IV as amended by the Justice Legislation Amendment (Succession and Surrogacy) Act 2014 (Vic), s5 - Whether the testator owed a moral duty to provide for the applicant - Whether the plaintiff had been estranged from the deceased and, if so, how did such estrangement affect the moral duty owed - Adequate quantum of such provision.

Freeman v Payne & Anor

[\[2017\] VCC 1941](#)

Judge Smith

21/12/2017

TRANSPORT ACCIDENT - Torts - Transport accident - Liability only.

Cox v Karkhanis

[\[2017\] VCC 1959](#)

Judge Saccardo

21/12/2017

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

Admiralty Law

Cause of action - Wherever arising - Foreign liens - Admiralty Act 1988 (Cth), s6(B) - Australia

Cremean, D. "Admiralty Act 1988 (Cth) s 6(B)." (2017) 91(12) ALJ 960-962.

Alternative Dispute Resolution

Mediation - Confidentiality - Privilege - Without prejudice communications - UK
Agapiou, A. and B. Clark. "The practical significance of confidentiality in mediation." (2018) 37(1) CJQ 74-97

Banking Law

Exception fees - Punishment - Penalties - Commercial interest - Paciocco v Australia & New Zealand Banking Group - Dunlop Pneumatic Co Ltd v New Garage & Motor Co Ltd - Australia & New Zealand Banking Group - Australia

Stumbles, J. "Paciocco in the High Court: penalties and late payment fees." (2017) 91(12) ALJ 986-1012.

Building Law

History - Appeals - Special leave - High Court - Australia

Sharkey, J. "Australian rules: a survey of the High Court of Australia on construction law 1965-2016." (2017) 91(12) ALJ 986-1012.

Constitutional Law

History - Referendums - Constitution Convention - State rights - Australian Constitution 1901 (Cth), s128 - Australia
Hobbs, H. and A. Trotter. "The Constitutional Conventions and constitutional change: making sense of multiple intentions." (2017) 38(1) Adel LR 49-85.

Contract Law

Anticipatory breach - Remedies - Relief - Equitable estoppel - Halfway house - Australia
Meiring, C. and K. Yin. "Anticipatory breach and estoppel - does estoppel provide a unified doctrine for relief in all cases of anticipatory breach?" (2017) 44(3) Aust Bar Rev 267-296.

Insured - Named insured - Additional insured - General insurance - Policies - Lambert Leasing Inc v QBE Australia Insurance (Australia) Ltd - Australia
Mead, P. "Insured: contracting party or third party beneficiary (and what of noting interests?)." (2017) 29(1) Ins LJ 56-67.

Personalia - John Carter - Legal scholarship - Influence - Publications - Journal of Contract Law - Australia

Phang, A. and G. Yihan. "Pioneering scholar and practitioner - the life and work of Professor J W Carter." (2017) 34(2) JCL 100-138.

Contract Law (con't)

Utmost good faith - Unconscionable conduct - Fair dealing - Unfair contract - ASIC - APRA - Insurance Contracts Act 1984 (Cth) - Australia

Mann, P. and S. Drummond. "Utmost good faith, unconscionable conduct and other notions of fairness - where are we now?" (2017) 29(1) Ins LJ 1-55.

Corporations Law

Debts - Unliquidated damages - Bank of Australasia v Hall - Box Valley Pty Ltd v Kidd - Corporations Act 2001 (Cth) , s95A, s588GA - NSW - Australia

Powers, L. "The impact of unliquidated claims when assessing solvency: a director's dilemma." (2017) 32(3) Aust Jnl of Corp Law 368-381.

Directors - Duties - Competing business - Director of competing company - Conflict of interests - Fiduciary duties - London and Mashonaland Exploration Co Ltd v New Mashonaland Exploration Co Ltd - UK - England - Scotland - Hong Kong - Australia
Korman, S. and R. Teele Langford. "The evolution of the law of competing directorships in the United Kingdom, Australia and Hong Kong." (2017) 32(3) Aust Jnl of Corp Law 333-350.

Insider trading - Criminal liability - Corporations - Individuals - Possession - Knowledge - Regulation - ASIC - Australia
Overland, J. "Reforming Australian insider trading laws: a new model of corporate criminal liability Part 1." (2017) 32(3) Aust Jnl of Corp Law 314-332.

Insider trading - Enforcement - Regulators - Sentencing - Sanctions - ASX - ASIC - MAS - Singapore Exchange - Research study - Singapore - Australia
Bromberg, L.e.al. "Similar insider trading laws, different enforcement reality: an evaluation of Australian and Singaporean enforcement approaches." (2017) 32(3) Aust Jnl of Corp Law 282-313.

Torts - Directors - Personal liability - Joint tortfeasors - Test - Australia

Byrne, M. "How do we assess the risk of personal liability for directors arising out of tortious acts?" (2017) 32(3) Aust Jnl of Corp Law 351-367.

Courts

Federal Court - History - Future - Australia
Chief Justice Allsop. "The role and future of the Federal Court within the Australian judicial system." (2017) 44(11) Brief 10-14.

Judicial system - Appellate courts - History - Judiciary - Court of Appeal - High Court - NSW - Australia
Justice Beazley. "An insight into appellate justice in New South Wales." (2017) 44(3) Aust Bar Rev 229-249.

Judiciary - Jury - Role of judge - Directions - R v Gold - UK
Laird, K. "Determining the proper functions of a judge and jury." (2018) 134(January) LQR 10-15.

Criminal Law & Procedure

Bodily sample - Elimination sample - Consent - DNA - Law reform - Criminal Investigations (Bodily Samples) Act 1995 (NZ) - Human Tissues Act 2008 (NZ) - NZ
Singh, T. "Voluntary bodily 'elimination sample': reference point for reform." [2017] (December) NZLJ 395-399.

Hate crime - Definition - Harm - Principles - Victims - Offences - UK
Bakalis, C. "The victims of hate crime and the principles of the criminal law." (2017) 37(4) Legal Studies 718-738.

Juries - Verdicts - History- Justification - Reasons - Unexplained verdict - Explained verdicts - UK
Coen, M. and J. Doak. "Embedding explained jury verdicts in the English criminal trial." (2017) 37(4) legal Studies 786-806.

Criminal Law & Procedure (con't)

Prisons - Private sector prisons - Public sector prisons - Reform - Officers - Prisoners - Culture - Morale - Birmingham - Research study - UK

Leibling, A. and A. Ludlow. "Privatising public prisons: penalty, law and practice." (2017) 50(4) A & NZ J Crim 473-492.

Protest - Surveillance - Defence - Pacifism - Pine Gap - Defence Special Undertakings Act 1952 (Cth) - Australia

Heath, M. "Continuing the Cold War tradition and suppressing contemporary dissent." (2017) 42(4) Alt LJ 248-252.

Sentencing - Parole - Australia

Freiberg, A. "Parole, populism and penal policy." (2017) 42(4) Alt LJ 247.

Sexual harassment - Sexual behaviour - Workplace - Public spaces - Public domain - Strict liability - Criminal law - UK

Luzon, G. "Criminalising sexual harassment." (2017) 81(5) Crim LJ 359-366.

Theft - Prosecution - Conviction - Sentencing - Instinctive synthesis - Statistics - Research study - Magistrates Court - Victoria - Australia

Farmer, C.e.al. "Inconsistencies in sentencing of theft offenders in Victoria: implications for the 'instinctive synthesis'." (2017) 44(3) Aust Bar Rev 318-337.

Environmental Law

Water - Water rights - Irrigation - History - River Murray - Murray-Darling Basin - SA - Australia

Webster, A. "A colonial history of the River Murray dispute." (2017) 38(1) Adel LR 13-47

Equity

Equitable principles - Trusts - Fiduciary duty - Judicial reasoning - Compensatory liability - Williams v Central Bank of Nigeria - FHR European Venture v Cedar Capital Partners - AIB Group v Mark Redler & Co - UK

Yip, M. and J. Lee. "The commercialisation of equity." (2017) 37(4) Legal Studies 647-671.

Fiduciary - Causal connection - Rent seeker - Allowances - Fully informed consent - Breach - Remedies - Australia Friendly Society Ltd v Ancient Order of Foresters in Victoria Friendly Society Ltd - Warman v Dwyer - Canada - NZ - Australia

Aitken, L. "'Widgets' or 'wodgets'? a heterodox reappraisal of the fiduciary who 'steals a business': 'account', 'allowances', 'consent' and other perplexing issues'." (2017) 44(3) Aust Bar Rev 250-266.

Overlapping claims - Common law - Equity - History - Australia

Leeming, M. "Overlapping claims at common law and in equity- an embarrassment of riches?" (2017) 11(3) J Eq 229-244.

Unjust enrichment - Knowing receipt - Strict liability - Statutory gaps - Credit avoidance legislation - UK - Australia

Bant, E. and M. Bryan. "Outflanking Barnes v Addy? the persistence of strict recipient liability." (2017) 11(3) Jnl Eq 271-292.

Human Rights

Prisoners - Compliance - Disabilities - Mental impairment - Solitary confinement - United Nations - Standard Minimum Rules of the Treatment of Prisoners - Mandela Rules - Australia

Mackay, A. (2017) 42(4) Alt LJ 279-285.

International Law

Cross-border litigation - Jurisdiction - Internet jurisdiction - International service - Choice of law - Choice of Court Convention - Conference - Australia

Douglas, M. "A consideration of current issues in private international law." (2017) 44(3) Aust Bar Rev 338-352.

Legal Systems

High Court - Privy Council - House of Lords - Judicial Committee of the Privy Council - JCPC - Human rights - Discrimination - Australia - UK

Kirby, M. "Legal obligations, legal revolutions." (2018) 134(January) LQR 43-68.

Legislation

Statutory interpretation - Principles - Context - *McGlade v Native Title Registrar* - *Jasmin v The Queen* - Australia

Basten, J. "Statutory Interpretation: Choosing Principles of Interpretation." (2017) 91(11) ALJ 881-885.

Practice & Procedure

Class actions - Liquidators - Litigation funding agreements - Bare cause of action - Payments - Settlement - *PricewaterhouseCoopers v Walker and Ors* - *Camdex International Ltd v Bank of Zambia* - NZ

Stace, V. "Supreme Court takes cautious approach to litigation funding arrangement by liquidator." [2017] (December) NZLJ 384-386, 418.

Class actions - Opt out - Class closure - Fiduciary duties - *Willmott Forests (No 4)* - Australia

Degeling, S. and M. Legg. "Class action settlements, opt-out and class closure: fiduciary conflicts." (2017) 11(3) Jnl Eq 319-345.

Property Law

Tenancy - Landlord and tenant - Commercial leases - Business leases - Small businesses - Tenant protection - Comparative analysis - Sweden - UK - Australia

Ahlinder, E. "Business tenant protection- for whom? for what? how? security of tenure within UK, Swedish and Australian law." (2017) 26(2) APLJ 159-194.

Water - Security - Groundwater - Managed Aquifer Recharge - MAR - Water Bank - Climate change - Water Act 1989 (Vic) - Victoria - Australia

Clune, T. and L. Crase. "Groundwater property: a key to climate resilient communities in Victoria." (2017) 26(2) APLJ 195-206.

Succession

Testamentary capacity - Mental capacity - Decision-making - Autonomy - Competence - Clinical assessment - Legal assessment - Health professionals - Wills - *Banks v Goodfellow* - Dementia - Australia

Lonie, J. and K. Purser. "Assessing testamentary capacity from the medical perspective." (2017) 44(3) Aust Bar Rev 297-317.

Torts

Conspiracy - Economic torts - Intentional infliction of harm - Primary liability - Accessory liability - *OBG v Allan* - Revenue and Customs Commissioners v Total Network - *Fish & Fish Ltd v Sea Shepherd* - UK

Davies, P. and P. Sales. "Intentional harm, accessories and conspiracies." (2018) 34(January) LQR 69-93.

Damages - Exemplary damages - Consciousness of wrongdoing - Principles - Australian test - High Court - New Zealand - NSW - Australia

Doecke, A. "Exemplary damages: retribution and condemnation - the purpose controlling the scope of the exemplary damages award." (2017) 38(1) Adel LR 87-112.

Torts (con't)

Defamation - Search engine providers - Google - Publisher - Qualified privilege - Statutory defence - Google v Duffy - Google v Trkulja - Defamation Act 2005 (SA), s28 - SA - Australia
Hafeez-Baig, M. and J. English. "The liability of search engine operators in defamation: issues relating to publication and qualified privilege." (2017) 24(3) Torts LJ 218-235.

Litigation - Compensation culture - Statutory intervention - Statutory duty - Common law - SARAH - Social Action, Responsibility and Heroism Act 2015 (UK) - UK
Goudkamp, J. "Restating the common law? the Social Action, Responsibility and Heroism Act 2015." (2017) 37(4) Legal Studies 577-598.

Mental harm - DSM - Saadati v Moorhead - Mustapha v Culligan of Canada Ltd. - Canada
McInnes, M. "Negligent infliction of mental harm in the Supreme Court of Canada." (2018) 134(January) LQR 1-5.

Vicarious liability - Intentional wrongdoing - Sexual abuse - Employers - Employees - Prince Alfred College Incorporated v ADC - New South Wales v Lepore - Comparative analysis - UK - Canada - Australia
Crawford, H. A step in the right direction? Vicarious liability for intentional wrongdoing of employees in Prince Alfred College Incorporated v ADC (2017) 24(3) Torts LJ 179-204.

Trusts

Express trust - Beneficiary - Restitution - Equitable ownership - Equitable proprietary rights - Australia
Hudson, J. "Equitable ownership and restitution of misapplied trust property." (2017) 11(3) Jnl Eq 245-270.

Trust deed - Mistake as to contents - Mistake as to meaning - Tax mistakes - Rectification - UK
Douglas, S. "Misuse of rectification in the law of trusts." (2018) 34(January) LQR 138-150.

Trusts (con't)

Trusts - Corporate assets - Knowing receipt - Beneficial receipt - Authority - Agent - Barnes v Addy - Australia
Yip, M. "Third parties' liability for receipt of misapplied corporate assets: the relevance of knowing receipt?" (2017) 11(3) Jnl Eq 293-318.

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