



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
16 February
2018

Library News

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.

All are welcome and entry is free. For more information or to RSVP for this session please email libraryevents@supcourt.vic.gov.au

Tour of the Supreme Court Library for legal professionals

Tuesday 27 March, 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 of the Library 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.

All are welcome and entry is free. For more information or to RSVP for this session please email libraryevents@supcourt.vic.gov.au

SUBSCRIBE TO THE LIBRARY BULLETIN

If you would like to receive the Library Bulletin by email, please contact us at lv@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

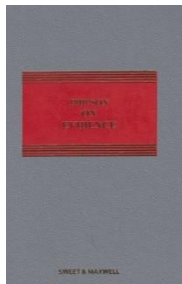
New Books	3
Legislation	4
Victorian Bills	4
Victorian Assents	4
Proclamations	4
High Court Cases	6
Victorian Supreme Court Cases	9
Court of Appeal	9
Commercial Court	13
Common Law Division	15
Criminal Division	19
County Court of Victoria Cases	22
Articles	23
Administrative Law	23
Constitutional Law	24
Courts	24
Criminal Law & Procedure	24
Human Rights	24
Medical Law	25
Practice & Procedure	25
Restitution	25
About the Law Library of Victoria	26

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/.

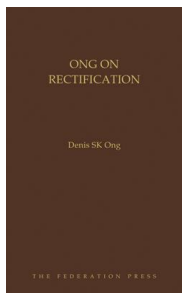
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



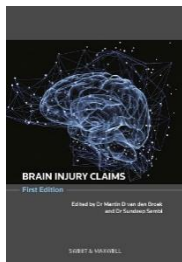
Malek, Hodge M. (ed), *Phipson on evidence*
19th ed., Sweet & Maxwell, London, 2018
Call number: 347.06 PHI.19 (Supreme Court Library)

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



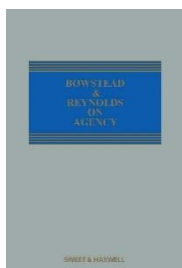
Ong, Denis S.K., *Ong on rectification*
The Federation Press, Annandale, 2017
Call number: 346.02 ONG (Supreme Court Library)

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



Van den Broek, Martin, and Sembi, Sundeep (ed), *Brain injury claims*
Thomson Reuters, London, 2017
Call number: 346.0323 BRA (Magistrates' Court Library)

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



Watts, Peter, and Reynolds, F.M.B. (ed), *Bowstead and Reynolds on agency*
21st ed., Sweet & Maxwell, London, 2018
Call number: 346.029 BOW.21 (Supreme Court Library, VCAT Library)

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

Legislation



Victorian Bills

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

- [Electricity Safety Amendment \(Electrical Equipment Safety Scheme\) Bill 2018](#)
- [Integrity and Accountability Legislation Amendment \(Public Interest Disclosures, Oversight and Independence\) Bill 2018](#)

Victorian Assents

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

- [Compensation Legislation Amendment Act 2018](#)
- [Firearms Amendment Act 2018](#)

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

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

- *Electronic Conveyancing (Adoption of National Law) Act 2013* No. 7 2013
 - Sections 16-23 of this Act come into operation on 14 February 2018 (SG49 13.2.2018)
- *Education and Care Services National Law Amendment Act 2017* No. 9 2017
 - Sections 30, 31, 68 of this Act come into operation on 1 February 2018 (SG303 12.9.2017)
- *Sentencing Amendment (Sentencing Standards) Act 2017* No. 34/2017
 - Sections 17-42 of this Act come into operation on 1 February 2018 (SG28 30.1.2018)

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

- *Compensation Legislation Amendment Act 2018 No. 1/2018*
 - Parts 1, 2 (sections 1-6), Part 4 (section 9) of this Act came in by forced commencement on 14 February 2018 s.2(1)
- *Corrections Legislation Miscellaneous Amendment Act 2017 No. 31/2017*
 - Sections 4, 5, 6, 12, 42, 43(1)(2), 44, 45, 62, 64 of this Act came in by forced commencement on 1 February 2018 s.2(3)
- *Firearms Amendment Act 2018 No. 2/2018*
 - Sections 1-3 of this Act came in by forced commencement on 14 February 2018 s.2(1)

High Court Cases

ADMINISTRATIVE LAW - Judicial review - Availability of certiorari - Error of law on face of record - Non-jurisdictional error - *Building and Construction Industry Security of Payment Act 1999* (NSW) - Where Act confers entitlement to "progress payment" on persons who undertake to carry out construction work under construction contracts and provides scheme for determining disputed claims - Where first respondent made claim for progress payment - Where claim referred to adjudicator for determination - Where adjudicator made error of law in reasons for determination - Where reasons form part of record - Whether Act ousts jurisdiction of Supreme Court of New South Wales to make order in nature of certiorari to quash determination for non-jurisdictional error of law on face of record.

WORDS AND PHRASES - "clear legislative intention", "error of law on the face of the record", "interim entitlement", "jurisdictional error", "non-jurisdictional error", "order in the nature of certiorari".

Probuild Constructions (Aust) P/L v Shade Systems P/L & Anor

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

14/02/2018

ADMINISTRATIVE LAW - Judicial review - *Building and Construction Industry Security of Payment Act 2009* (SA) - Where subcontract provided for sum to be paid to subcontractor after issue of certificate of occupancy - Where issue of certificate of occupancy required certification from builder that building work performed in accordance with head contract - Where adjudicator appointed to determine disputed payment claim - Where adjudicator determined provisions of subcontract ineffective because pay when paid provisions - Whether adjudicator's determination involved error of law - Whether adjudicator's determination should be quashed.

ADMINISTRATIVE LAW - Judicial review - Availability of certiorari - Error of law on face of record - Whether *Building and Construction Industry Security of Payment Act 2009* (SA) ousts jurisdiction of Supreme Court of South Australia to make order in nature of certiorari to quash adjudicator's determination for nonjurisdictional error of law on face of record.

WORDS AND PHRASES - "contingent or dependent on the operation of", "error of law on the face of the record", "order in the nature of certiorari", "pay when paid provision", "retention provisions".

Maxcon Constructions P/L v Michael Christopher Vadasz (trading as Australasian Piling Company) & Ors

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

14/02/2018

CONSTITUTIONAL LAW (CTH) - Judicial power - Ch III - Where plaintiff holder of Absorbed Person Visa and Class BF Transitional (Permanent) Visa - Where plaintiff convicted of trafficking large commercial quantity of cannabis and sentenced to 11 years' imprisonment - Where s501(3A) of Migration Act 1958 (Cth) requires Minister for Immigration and Border Protection to cancel visa where visa holder has substantial criminal record and is serving sentence of imprisonment on full-time basis - Where plaintiff's visas cancelled under s501(3A) - Where plaintiff held in immigration detention pending deportation - Whether s501(3A) authorises or requires detention - Whether purpose of s501(3A) is to punish - Whether s501(3A) confers judicial power on Minister - Whether s501(3A) invalid as contrary to Ch III of Constitution.

WORDS AND PHRASES - "aliens", "character test", "immigration detention", "judicial power", "protection of society", "punishment", "punitive purpose", "substantial criminal record", "unlawful non-citizen".

Falzon, John v Minister for Immigration and Border Protection

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

07/02/2018

CRIMINAL LAW - Forfeiture of property - Where restraining orders made in respect of certain property suspected of being under effective control of person suspected of certain offences - Where person convicted of offences - Where property automatically forfeited to Commonwealth under s92 of Proceeds of Crime Act 2002 (Cth) - Where companies associated with convicted person applied for orders under s102 of Proceeds of Crime Act for recovery of interests, or amounts equal to value of interests, in forfeited property - Whether forfeited property "not used in, or in connection with, any unlawful activity" within s102(3)(a) of Proceeds of Crime Act - Whether "use" requires that property be necessary for or have made unique contribution to unlawful activity - Whether degree of use must be proportionate to forfeiture of property - Whether forfeited property "not derived or realised, directly or indirectly, by any person from any unlawful activity" within s102(3)(a) of Proceeds of Crime Act - Whether property "derived" if wholly or partly derived from unlawful activity - Whether degree of derivation must be substantial - Whether forfeited property "acquired ... lawfully" within s102(3)(b) of Proceeds of Crime Act - Whether applicant must prove each step in process of acquisition lawful - Whether applicant must prove all consideration paid for property lawfully acquired.

CRIMINAL LAW - Forfeiture of property - Application under s141 of Proceeds of Crime Act 2002 (Cth) for order that forfeited property be available to satisfy pecuniary penalty order against convicted person - Where court must be satisfied property subject to effective control of convicted person - Whether effective control determined as at date of restraining order in respect of property or as at date of determination of application under s141.

WORDS AND PHRASES - "acquired the property lawfully", "derived", "directly or indirectly", "effective control", "forfeiture", "interest", "lawfully acquired", "partly derived", "proceeds of an offence", "proceeds of crime", "realised", "unlawful activity", "used in, or in connection with", "wholly derived".

Commissioner of the Australian Federal Police and Hart, Steven Irvine & Ors; Commonwealth of Australia and Yak 3 Investments P/L as trustee for Yak 3 Discretionary Trust & Ors; and Commonwealth of Australia & Anor and Flying Fighters P/L & Ors

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

07/02/2018

INDUSTRIAL LAW - Pecuniary penalties - Where union official contravened civil remedy provision of *Fair Work Act 2009* (Cth) - Where union contravened civil remedy provision through union official's conduct - Where s546 of *Fair Work Act* provides court can order person to pay pecuniary penalty - Where s545(1) of *Fair Work Act* provides court can make any order it considers appropriate if satisfied person contravened, or proposes to contravene, civil remedy provision - Where pecuniary penalties imposed on both union official and union - Whether s545(1) or s546 of *Fair Work Act* or s23 of *Federal Court of Australia Act 1976* (Cth) empowers court to order that union not indemnify union official against pecuniary penalty - Whether s545(1) or s546 of *Fair Work Act* or s23 of *Federal Court of Australia Act* empowers court to order that union official not seek or accept indemnity or contribution from union in respect of pecuniary penalty.

WORDS AND PHRASES - "appropriate", "Bragdon order", "civil remedy provision", "deterrence", "implied power", "legally ancillary", "non-indemnification order", "pecuniary penalty", "penal outcome", "penal purpose", "person other than the contravener", "personal payment order", "reasonably required".

Australian Building and Construction Commissioner v Construction, Forestry, Mining and Energy Union & Anor

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

14/02/2018

Victorian Supreme Court Cases

Court of Appeal

APPEALS - Procedure - Proposed ground of appeal alleged that judgment procured by fraud - Issue of fraud contested - Inappropriate for Court of Appeal to determine issue of fraud - Hearing and determination of issue of fraud remitted to County Court.

JUDGMENTS - Setting aside for fraud - Nature of proceeding to set aside judgment on ground of fraud - Whether appropriate for Court of Appeal to determine issue of fraud.

Heaney Enterprises P/L (ACN 147 489 601) v Just Cuts Franchising P/L (ACN 066 461 167)

Santamaria JA and McDonald AJA

[\[2018\] VSCA 25](#)

15/02/2018

CRIMINAL LAW - Appeal - Conviction - Murder - Whether verdict unreasonable or cannot be supported having regard to the evidence - Whether open to jury to reject possibility that the applicant acted without intention to cause really serious injury - Dispute over money taken by deceased - Deceased stabbed three times with knife - Leave to appeal refused.

Schiller, Alicia Jade v The Queen

Weinberg JA, Priest JA, and Niall JA

[\[2018\] VSCA 20](#)

09/02/2018

CRIMINAL LAW - Appeal - Sentence - Four offenders charged with attempting to pervert the course of justice - One applicant also charged with armed robbery - Applicants together attempted to persuade prosecution witness to resile from statement made to police - Statement identified first applicant as perpetrator of armed robbery - First applicant already serving lengthy sentence of imprisonment for unrelated offending - Fixing of new single non-parole period - New non-parole period imposed below excessive - Sentences for two of remaining three offenders also excessive - Appeals allowed - Sentences reduced.

Middleton, Simon v The Queen; Middleton, Shane v The Queen; Anagnostou, Angelo v The Queen; Comeadow, Renee v The Queen

Weinberg JA and Coghlan JA

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

15/02/2018

CRIMINAL LAW - Appeal - Sentence - Unlawful and dangerous act manslaughter - Applicant sentenced to eight years' imprisonment with non-parole period of five years - Confrontation in busy city street at night - Death caused by single punch to head - Victim fell to ground and suffered fractured skull and brain damage - Whether reasonably arguable that sentence manifestly excessive - Whether judge unduly influenced by Victim Impact Statements and high regard in which victim held - Whether judge overstated objective gravity of offence - Leave to appeal refused.

Vincec, Richard v The Queen

Weinberg JA

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

08/02/2018

CRIMINAL LAW - Crown Appeal - Sentence - Murder, aggravated burglary and theft - Respondent sentenced to a total effective sentence of 16 years' imprisonment with non-parole period of 13 years - Whether sentence manifestly inadequate - Whether too much weight given to respondent's assistance to authorities - Appeal allowed - Respondent resentenced to a total effective sentence of 24 years' imprisonment with a non-parole period of 20 years.

Director of Public Prosecutions [DPP] v Cooper, Jonathan

Weinberg JA, Priest JA, and Beach JA

[\[2018\] VSCA 21](#)

12/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Applicant pleaded guilty to one charge of armed robbery and one charge of theft - Applicant and co-offender robbed liquor store armed with knives - Applicant sentenced to five years' imprisonment with a non-parole period of 3 years - Whether sentence manifestly excessive - Whether sentencing judge erred in ordering six months cumulation on theft charge - Whether applicant's youth, deprived background and aboriginality appropriately taken into account in mitigation - Whether applicant's participation in Koori Court process a consideration in sentencing synthesis - Leave to appeal against sentence granted.

Honeysett, Damian v The Queen

Weinberg JA

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

02/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal against sentence - Applicant pleaded guilty to trafficking in a drug of dependence (methamphetamine) - Sentenced to two year community correction order with conviction - Whether sentencing judge erred by recording conviction - Whether impact of conviction on applicant's employment prospects, and 43 days in custody on remand, adequately taken into account - No reasonable prospect that Court of Appeal would find sentencing discretion miscarried - Leave to appeal against sentence refused.

Chang, Beatrice v The Queen

Weinberg JA

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

01/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Applicant pleaded guilty to five charges of aggravated burglary, four charges of theft, two charges of attempted armed robbery, one charge of false imprisonment, one charge of resist emergency worker on duty and one charge of unlawful assault - Crime spree across five residences at night - Applicant sentenced to five years' imprisonment with a non-parole period of two years and six months - Whether sentence manifestly excessive - Whether applicant's youth and traumatic refugee background adequately taken into account as mitigation - No reasonable prospect of lesser sentence being imposed if leave to appeal granted - Application refused.

Leime, Andrew v The Queen

Weinberg JA

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

02/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Rape - Pregnancy - Plea of guilty - Complainant intellectually disabled daughter of de facto partner - Sentenced to seven years' imprisonment - Non-parole period of five years - Whether judge erred in treating offending as an act of commission rather than omission - Whether state of mind of not giving any thought to whether the complainant was not consenting or might not be consenting rendered offender less culpable - Manifest excess - Leave to appeal refused.

Turner, Jacob (a Pseudonym) v The Queen

Tate JA

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

15/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Unlawful and dangerous act manslaughter, theft of a motor vehicle and arson - 'Drive-by' shooting - Plea of guilty - Total effective sentence of 12 years' imprisonment - Non-parole period of nine years - Manifest excess - Leave to appeal refused.

Atesok, Serdar v The Queen

Tate JA

[\[2018\] VSCA 22](#)

15/02/2018

PRACTICE AND PROCEDURE - Application to set aside orders of judicial registrar refusing extension of time to file application for leave to appeal - Nature of application - Delay of 145 days - Whether adequate explanation for delay - Prospects of success of arguments in support of proposed grounds of appeal - Where applicant impecunious - Whether prejudice to respondent - Application refused.

TRUSTS AND TRUSTEES - Trustee - Duties of trustee - Where trust moneys pooled as part of investment - Whether pooling of trust moneys inconsistent with duty of trustee to deal with trust moneys as separate fund.

Lopez, Jose Maria v Harstedt P/L

Santamaria JA and Niall JA

[\[2018\] VSCA 19](#)

09/02/2018

SUMMARY JUDGMENT - Primary judge summarily dismissed negligence proceeding brought by applicant on basis that proceeding statute barred - Whether primary judge erred in determining limitation defence on summary basis - Whether primary judge erred in assessing when cause of action accrued - *Hawkins v Clayton* (1988) 164 CLR 539, *Wardley Australia Ltd v State of Western Australia* (1992) 175 CLR 514, *Murphy v Overton Investments Pty Ltd* (2004) 216 CLR 388, *HTW Valuers (Central Qld) Pty Ltd v Astonland Pty Ltd* (2004) 217 CLR 640 and *Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd* (2013) 42 VR 27 applied - Limitation of Actions Act 1958 s5 - Civil Procedure Act 2010 s63.

COURTS AND JUDGES - Apprehended bias - Application for summary judgment - Where preliminary applications made before and during hearing of summary judgment application - Whether judge acted with reasonable apprehension of bias in dealing with application to restrain legal practitioners - Where judge accepted affidavit evidence without cross-examination - Where applicant alleges that judge made pejorative comments - Whether judge decided summary judgment application and preliminary applications other than on merits - *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 applied.

COURTS AND JUDGES - Natural justice - Where applicant filed summons to reopen summary judgment application or for dismissal of summary judgment application as abuse of process - Where judge dismissed summons without adjudication - Where judge refused application to cross-examine legal practitioners of respondent at hearing of summary judgment application - Whether denial of natural justice.

APPEALS - Findings of fact - Whether judge made finding of fact with respect to retention of solicitors' file - Whether judge erred in finding that party gave no notice to opponent of intention to make preliminary applications at hearing of summary judgment application - Whether error inconsequential.

Bodycorp Repairers P/L (ACN 068 589 408) v Holding Redlich

Whelan JA, Santamaria JA, and T Forrest AJA

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

08/02/2018

Commercial Court

COSTS - Proceeding settled on terms defendant will pay plaintiff's costs on a standard basis, or indemnity basis if ordered by the Court - Application for indemnity costs - Application refused.

Owners Corporation 630063L v CGU Insurance Ltd (ACN 004 478 371)

Hargrave JA

[\[2018\] VSC 34](#)

09/02/2018

EQUITY - Trusts and trustees - Whether an express trust settled by transfer to solicitor's trust account - Common intention of the parties - Whether only settlor's intent necessary - Objective test - Whether agreement implied by course of past conduct.

LEGAL PROFESSION - Holding and disbursing of trust money by a solicitor - Effect of s3.3.2, 3.3.3(3) and s3.3.14 - Breach of statutory duty - Whether possible to bring a private action under Legal Profession Act 2004 s3.3.14.

Braham Investments P/L (ACN 092 139 403) in its capacity as trustee of the Braham Investments Trust v Sovereign MF Ltd (ACN 104 694 555) (In Liquidation) in its own capacity and in its capacity as the trustee of the Sovereign Tarneit Land Fund, Eos Janus Capital P/L (ACN 007 031 405) (In Liquidation) and Wantrup, Charles

Digby J

[\[2017\] VSC 801](#)

22/12/2017

FUNDS IN COURT - Net proceeds of sale of joint interest realised pursuant to the provisions of the governing Joint Venture Agreement - Application for payment out - Competing claims - Plaintiffs' claims pursuant to a constructive trust, a proprietary remedy under s588FF of the Corporations Act 2001 (Cth) ('Corporations Act') or pursuant to the rule in Universal Distributing Company Limited (in liq) - Claim by corporate trustee (now in liquidation) as the former holder of the joint venture interest to a right of indemnity secured by a charge or lien over the fund in court - Claim by beneficiary of the trust that the joint venture interest had been distributed to another trust prior to realisation pursuant to the Joint Venture Agreement.

BREACH OF FIDUCIARY DUTY BY DIRECTOR - Constructive trust - Personal obligation attaching to trust property - Interrelationship between a constructive trust and tracing.

CORPORATIONS - Corporations Act, s588FF(1)(d) - Availability of proprietary remedy - Identification of property to which the remedy could attach.

TRACING - Equitable tracing - Money paid to meet liabilities - Money paid into bank account to extinguish debt or meet expenses.

RULE IN UNIVERSAL DISTRIBUTING - Creation of fund - Increase in fund paid into court - Benefit to trust property.

TRUSTEES RIGHT OF INDEMNITY - Whether deed of settlement - Can exclude the trustee's right of indemnity.

Australia's Residential Builder P/L (ACN 136 733 732) (In Liquidation) and Rohrt, Richard Trygve in his capacity as joint and several liquidator of Australia's Residential Builder P/L (ACN 136 733 732) (In Liquidation) v Wiederstein, Robert; De Weerd, Raymond Francis; Wiederstein, Bronwyn and Wiederstein Corporation P/L (In Liquidation) as the former trustee of the Weiderstein Investment Trust

Randall AsJ

[\[2018\] VSC 37](#)

09/02/2018

LEGAL PRACTITIONERS - Solicitors - Application to restrain solicitor from acting where solicitor allegedly exposed to suit - Application refused where suit hypothetical and conduct unlikely to come under attack in this proceeding - Relief also refused having regard to the timing of the application.

Meyfield Developments P/L (ACN 168 772 656) v Altus Development P/L (ACN 163 362 990); Gilbert, Anthony; Yip, Kwong; Shield Partners P/L (ACN 602 868 860) trading as Shield Partners Lawyers; Seremelis, Melissa (also known as Melissa Anne Waduge) and Ferraro, Anthony

Kennedy J

[\[2018\] VSC 25](#)

08/02/2018

PRACTICE AND PROCEDURE - Appeal from decision of associate judge - Originating process seeking relief under s588FF of the Corporations Act 2001 (Cth) - Originating process amended prior to the return date but after the expiry of time for service - Application to amend return date to validate service - Discretion invalidly exercised - Appeal allowed - Rules 3.02 and 36.03 Supreme Court (General Civil Procedure) Rules 2015 (Vic).

Convecton Grain P/L (In Liquidation) v Laureville P/L (No 2)

Robson J

[\[2018\] VSC 33](#)

08/02/2018

PRACTICE AND PROCEDURE - Costs - Apportionment of costs - Applicable principles - Ritter v Godfrey [1920] 2 KB 47; Oshlack v Richmond River Council (1998) 193 CLR 72; Chen v Chan [2009] VSCA 233.

Perpetual Ltd (ACN 000 431 827); Bridgehead P/L (ACN 006 082 515) and Vicinity Funds Re Ltd (ACN 084 098 180) v Myer P/L (ACN 004 143 239) (No 2)

Croft J

[\[2018\] VSC 57](#)

16/02/2018

PRACTICE AND PROCEDURE - Discovery - Requirement for leave for any further interlocutory applications - Privilege claim - Further and better discovery - Evidence Act 2008 (Vic), s118 - Supreme Court (General Procedure) Rules 2015 (Vic), r29.08 - Civil Procedure Act 2010 (Vic), s7, s8, s24, s29(1)(e).

Cargill Australia Ltd (ACN 004 684 173) v Viterra Malt P/L (ACN 096 519 658) & Ors and Cargill, Incorporated & Ors

Elliott J

[\[2018\] VSC 44](#)

09/02/2018

PRACTICE AND PROCEDURE - Legal professional privilege - Production of documents in the course of a public examination - Solicitor's invoices - Appropriate redactions - Inspection of documents for the purpose of determining the question - Ruling sustaining privilege in relation to some redactions and rejecting privilege in relation to others - Corporations Act 2001 (Cth), Division 1 of Part 5.9.

Bank Mansion P/L (In Liquidation) (ACN 142 812 360) and Franklin, Glenn in his capacity as liquidator of Bank Mansion P/L (In Liquidation) (ACN 142 812 360)

Matthews JR

[\[2018\] VSC 52](#)

02/02/2018

PRACTICE AND PROCEDURE - Summary judgment - Contract - Guarantees - Defences - Duress - Unconscionable conduct - Breach of principal agreement - Civil Procedure Act 2010 (Vic), s63 - Supreme Court (General Civil Procedure) Rules 2015 (Vic) - Australian Competition and Consumer Act 2010 (Cth), Schedule 2 - Leave to defend granted.

Mitsopoulos, Dimitrios & Ors v Tzouramanis, George

Elliott J

[\[2018\] VSC 42](#)

01/02/2018

Common Law Division

ADMINISTRATIVE LAW - Judicial review of Merit Protection Boards decision confirming plaintiff's annulment of probation - Whether Boards acted beyond jurisdiction in making a finding on the probationary clause in the employment contract - Whether Boards misconstrued probationary clause - Whether probationary clause was an anticipatory fetter on the future exercise of a discretionary statutory power - Probationary clause invalid - Whether Boards disclosed path of reasoning of findings - Ansett Transport Industries (Operations) Pty Ltd v The Commonwealth [1977] 139 CLR 54 - O'Hara v State of Victoria (Department of Education and Training) (2004) 133 IR 118 - Education and Training Reform Act 2006 - Administrative Law Act 1978 - Ministerial Order 199 - O 56 Supreme Court (General Civil Procedure) Rules 2015.

Tutos, Marius Lucian v The State of Victoria and The Merit Protection Boards

Ierodiaconou AsJ

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

05/02/2018

CONTEMPT OF COURT - Breaches of freezing order - Breaches wilful - Whether court should convict - Appropriate penalty - Supreme Court of Victoria (General Civil Procedure) Rules 2005, r75.11.

Fortune Holding Group P/L (ACN 141 953 773); Fortune Holding Developments P/L (ACN 142 122 852); Fortune Homes P/L (ACN 143 589 388) and Quan, Yi Jun v Zhang, Ian Yan

Zammit J

[\[2018\] VSC 22](#)

13/02/2018

COSTS - Application for removal of caveat pursuant to s90(3) of Transfer of Land Act 1958 (Vic) - Order for removal of caveat in favour of plaintiffs owing to balance of convenience being overwhelmingly in favour of removal - No consideration of whether there was a serious question to be tried - Whether costs follow the event in circumstances where successful plaintiff had failed to notify caveator of intention to apply for removal of caveat when caveator represented by solicitors - Application made seven weeks after caveat lodged and seven business days prior to date for property settlement - Plaintiffs' solicitors on notice of caveat since date of lodgement - Plaintiffs' failure to attempt to procure a withdrawal of the caveat prior to making application - Failure to comply with overarching obligations under Civil Procedure Act 2010 (Vic) - Each party ordered to bear its own costs of the proceeding.

Toh, Kenny Chi Foong and Choo, Wey Yin v Wu, Nikki and Registrar of Titles

Daly AsJ

[\[2018\] VSC 36](#)

12/02/2018

CRIMINAL PROCEDURE - Application by informant to withdraw charges in Magistrates' Court - Whether the Magistrates' Court has jurisdiction to refuse application discussed.

COURTS AND TRIBUNALS - Procedural fairness - Magistrate refusing to hear from accused in opposition to informant's application to withdraw charges - Failure to afford procedural fairness - Matter remitted for rehearing.

Brazel, Gregory John v Melbourne Magistrates' Court and Trimboli, Dominic

Riordan J

[\[2018\] VSC 48](#)

13/02/2018

DEFAMATION - Pleadings - Application to strike out - Defences of justification and contextual truth - Whether arguable that particulars could justify plaintiff's imputation - Whether contextual implications were of sufficient seriousness and were in addition to the plaintiff's imputations - Defamation Act 2005 (Vic) s25, s26.

Fenn, Ashley and Ethan Affordable Housing Ltd (ACN 135 818 245) v Australian Broadcasting Corporation

John Dixon J

[\[2018\] VSC 60](#)

16/02/2018

INJUNCTION - Plaintiff accessed second defendant's confidential information when conducting an audit of an employee's laptop computer - Employee undertaking work for second defendant in breach of contractual obligations to plaintiff - Plaintiff utilised confidential information in preparation of statement of claim - Application for orders striking out statement of claim and restraining plaintiff's lawyers from continuing to act in proceeding - Circumstances in which plaintiff accessed confidential information did not impose obligation to maintain confidentiality of documents - Application dismissed.

Integrated Global Partners P/L (ACN 161 017 634) v Hyde, Emma; Tactical Transformation Services And Associates P/L (ACN 618 448 454) and Nucifora, Michael John

McDonald J

[\[2018\] VSC 45](#)

13/02/2018

JUDICIAL REVIEW AND APPEALS - Appeal to County Court concerning conviction for knowingly possessing child pornography - Alleged failure to grant adjournment - Claim of denial of procedural fairness by Judge - Inability of plaintiff to obtain internet access - Not relevant to conviction or penalty - Application dismissed.

Garde J

Stewart, Vern v County Court of Victoria and Hill, Ross John

[\[2018\] VSC 58](#)

15/02/2018

JUDICIAL REVIEW AND APPEALS - Anshun estoppel - Abuse of process - Applicant failed to attend hearings - Leave to appeal from a decision of the Victorian Civil and Administrative Tribunal - No real or significant argument that error of law exists - No question of law of general or public importance - Application for leave to appeal dismissed - Victorian Civil and Administrative Tribunal Act 1998 (Vic) s148(1)(b).

Pusey, Richard v Bayside Cabinet Makers P/L (ACN 154 170 180)

Garde J

[\[2018\] VSC 28](#)

05/02/2018

JUDICIAL REVIEW AND APPEALS - Application by employer for judicial review of a medical panel ('Panel')'s opinion in respect of worker's work capacity - Panel finding that worker had no current work capacity resulted in worker's ongoing entitlement to compensation - Worker disclosed new information concerning his engaging in light manual labour during psychiatric assessment conducted separately to assessment by physical doctors - Whether failure of Panel to inform employer of new information amounted to failure to afford procedural fairness - Whether Panel's failure to inform employer of new information was or may have been material to its determination - Application of the 'hearing rule' in the context of proceedings involving judicial review of medical panel opinions - Failure to afford procedural fairness - Failure to take into account a relevant consideration - Panel's opinion to be quashed - *Barrett Burston Malting Co v Kotzman* [2013] VSC 248, applied - *Sargent v Disler & Ors* [2016] VSC 292, applied - *YG-1 Australia Pty Ltd v Dr Brann & ors* [2016] VSC 713, applied - *Bahonko v Moorfields Community* [2008] VSCA 6, applied - *Ryan v Grange at Wodonga Pty Ltd* [2015] VSCA 17 applied - Failure to provide adequate reasons on basis of failure to reconcile factual inconsistencies - *Wingfoot Australia Partners Pty Ltd v Kocak* (2013) 252 CLR 480, applied.

EVIDENCE - Discrepancy between worker's evidence as to what was said during psychiatric assessment and records of the presiding decision maker - Records of decision maker generally prevail in event of conflict between party and decision-maker as to accuracy of what occurred - *Karabinis v Bendrops & Ors* [2017] VSC 648, applied.

Moggill Cove P/L v Burton, Steven Richard; Roberts, A/Prof Lynden; Gibbons, A/Prof Peter; Neill, Dr Diane and Pullar, Michael

Daly AsJ

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

07/02/2018

PRACTICE AND PROCEDURE - Application for final relief by way of an order formally answering questions in a statement of issues forming basis of reasons for judgment - Application for stay of part-heard counterclaim pending appeals - Where remaining steps in determination of counterclaim include reference to special referee and quantification of damages - Relevant considerations in exercise of Court's discretion.

Amcor Ltd & Ors v Barnes & Ors (Ruling No 1)

Sloss J

[\[2018\] VSC 21](#)

02/02/2018

PRACTICE AND PROCEDURE - Application for leave to appeal orders of the Victorian Civil and Administrative Tribunal - Leave to appeal listed for hearing with the appeal if leave is granted - Defendant applies for summary dismissal prior to the grant of leave - Interrelationship of Civil Procedure Act 2010 s62, s63 and s64 and the test for leave to appeal articulated in *Secretary to the Department of Premier and Cabinet v Hulls* [1999] 3 VR 331.

APPEAL FROM VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL - Application for leave to appeal an order for possession and orders striking out two other proceedings - Applicant has no real prospect of success in establishing a ground for leave to appeal - Proceeding summarily dismissed - Residential Tenancies Act 1997 s259 and s330.

Dodson, Wendy v Cityview Property Investments P/L (ACN 166 639 023)

Lansdowne AsJ

[\[2018\] VSC 56](#)

15/02/2018

PRACTICE AND PROCEDURE - Application for leave to commence proceeding under s54 of the Vexatious Proceedings Act 2014 (Vic) - Proposed application for extension of time in which to file leave to appeal against conviction and sentence and an application for bail - Whether application properly made to a judge in the Trial Division - Whether reasonable grounds for proposed proceeding and applications - Vexatious Proceedings Act 2014 (Vic) s3, s30, s32, s54, s55, s56.

VEXATIOUS LITIGANTS - Application of Vexatious Proceedings Act 2014 (Vic) to person declared vexatious litigant under s21 of the Supreme Court Act 1986 (Vic) (repealed) - Vexatious Proceedings Act 2014 (Vic) s91.

In the matter of applications under section 54 of the Vexatious Proceedings Act 2014 (Vic). Slaveski, Lupco v The Queen

John Dixon J

[\[2018\] VSC 39](#)

12/02/2018

PRACTICE AND PROCEDURE - Discovery of documents - Plaintiffs' application made late - Plaintiffs' substantial delay not adequately explained - Where Court required to find most efficient, effective and economical management of application - Liesfield v SPI Electricity Pty Ltd (Ruling No 1) (2013) 43 VR 493.

Mandie, Edward Nicholas; Mandie, Jane Elisabeth; Mandie, Isabella; Amanda Mandie; Mandie, Nicholas Elliott; Mandie, Daniella (a person under a disability being a minor by her litigation guardian Amanda Mandies) v Memart Nominees P/L (ACN 005 024 617) (as trustee for the David Mandie Family Trust)

McMillan J

[\[2018\] VSC 49](#)

07/02/2018

PRACTICE AND PROCEDURE - Warrants of execution - Appeal from refusal of a Judicial Registrar to grant leave to issue warrant of execution to enforce judgment - Where six years had elapsed since judgment took effect - Where change had taken place, by assignment, in the identity of the person entitled to execution under the judgment - Whether legal assignment required by the rules or equitable assignment sufficient - Appeal requiring hearing of application de novo - Evidence showing reasons for delay not satisfactory - discretion to grant or refuse leave - Discretion exercised to refuse leave - Supreme Court (General Civil Procedure) Rules 2015, r68.02; Hammon v Kampfhenteel [1895] 21 VLR 202; In the estate of Carter; Re Ascot Timber Co Pty Ltd v Carter [1928] VLR 290; Solic v Bertossa [1969] VR 594; Dennehy v Reasonable Endeavours Pty Ltd [2001] VSC 447; World Square Pty Ltd v Taylor [1990] 1 Qd R 583; WT Lamb & Sons [1948] 2 KB 331.

ASSIGNMENT OF CHOSSES IN ACTION - Assignment of judgments - Requirements for valid legal assignment of a judgment for debt - Assignment in equity - Notice of assignment to the debtor not essential to the validity of equitable assignment of a presently existing legal chose in action - In equity and at law a judgment may be the subject of an assignment - Assignment of a legal chose in action, for value, which fails to satisfy the requirements for an assignment at law is effectual as an equitable assignment - Property Law Act 1958 (Vic), s134; William Brandt's Sons & Co v Dunlop Rubber Co Ltd [1905] 2 AC 454; Gould v Skinner [1983] 1 Qd R 377; Thomas v National Australia Bank Ltd [2000] 2 Qd R 448; Alma Hill Constructions Pty Ltd v Onal (2007) 16 VR 190.

Commonwealth Bank of Australia v Saggese, Raymond (by his litigation guardian Ms Morena Saggese)

Derham AsJ

[\[2018\] VSC 40](#)

12/02/2018

SUCCESSION, WILLS AND PROBATE - Informal computer will - Where testator took own life - Whether testator intended informal document to be his final will - Whether testator had testamentary capacity - Wills Act 1997, s7 and s9.

In the matter of the Will of White, George deceased. Montgomery, John and Montgomery, Jane v Taylor, Mary

McMillan J

[\[2018\] VSC 16](#)

09/02/2018

WORKCOVER - Deemed employer - Deemed worker - Third defendant not carrying on an independent trade or business in the provision of services to the plaintiff - Plaintiff deemed to be the employer of the second defendant - Workplace Injury Rehabilitation and Compensation Act 2013 (Vic) s4(3), sch 1 cl 9.

BSA Ltd (ACN 088 412 748) v Victorian WorkCover Authority; Yoresh, Tal and Cloudless Vision P/L (ACN 110 660 252)

McDonald J

[\[2018\] VSC 46](#)

13/02/2018

Criminal Division

CRIMINAL LAW - Accused charged with federal offences triable in the Supreme Court - Committal proceedings - Initial psychiatric report questioned fitness to stand trial - Magistrate referred fitness issue to Supreme Court - Unanimous expert evidence before Supreme Court that accused currently fit to stand trial - Whether necessary to refer fitness question to jury in those circumstances - Court's inherent power to act where circumstances changed so as to render fitness investigation unnecessary - R v Demicoli [2006] VSCA 69 applied - Proceeding remitted back to Magistrates' Court for committal hearing - Crimes Act 1914 (Cth) s20B, Judiciary Act 1903 (Cth) s68 and s79, Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic) s6, s7, s9 and s11.

Director of Public Prosecutions [DPP] (Cth) v Galea, Phillip Michael

Hollingworth J

[\[2018\] VSC 30](#)

07/02/2018

CRIMINAL LAW - Bail - Appeal against refusal - Possession and manufacture of firearms - Assault and threats to kill - Breach of family violence intervention order - Whether applicant shows cause - Whether conditions ameliorate unacceptable risk - Bail refused - Bail Act 1977 (Vic) s4(4).

In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Wishart, Ronald

Champion J

[\[2018\] VSC 41](#)

12/02/2018

CRIMINAL LAW - Criminal Procedure - Whether to reserve a question of law for the Court of Appeal in respect of a public interest immunity ruling requiring the Commonwealth to disclose certain information to an accused charged with murder - Whether Court has power to reserve question of law where Court has ruled on the public interest immunity claim and where the Commonwealth is not a party to the proceeding against the accused - Whether appropriate to reserve question of law - Question of law reserved - Criminal Procedure Act 2009 ss 302, 305, 337 - R v Yucel (Ruling No 3) [2018] VSC 51 - DPP (Cth) v Galloway (a pseudonym) & Ors [2014] VSCA 272; (2014) 46 VR 809.

Beale J

The Queen v Yucel, Kamil (Ruling No 4)

[\[2018\] VSC 62](#)

16/02/2018

CRIMINAL LAW - Murder - Post offence conduct - Whether relevant to guilt of offence of murder as opposed to manslaughter - Whether evidence intractably neutral - R v Ciantar (2006) 16 VR 26 considered.

Director of Public Prosecutions [DPP] v Wan, Shengliang (Ruling No 1)

Kaye JA

[\[2018\] VSC 19](#)

30/01/2018

CRIMINAL LAW - Murder - Sentence following trial - Spontaneous offence in course of attempted armed robbery for drugs - Following conviction for murder, pleaded guilty to further charges of aggravated burglary, intentionally causing injury and theft occurring two days prior to murder - Drug related offending - Totality principle - Total effective sentence of 23 years and four months, with a non-parole period of 18 years and four months.

Director of Public Prosecutions [DPP] v Molfese, Josef

Jane Dixon J

[\[2018\] VSC 32](#)

14/02/2018

CRIMINAL LAW - Pre-trial ruling - Six men charged jointly with offence of engaging in conduct preparatory to offence of entering a foreign country with intention of engaging in a hostile activity in that country - New indictment and particulars filed over previous indictment following earlier rulings - Whether new particulars not in fact particulars but merely restatement of offence - Whether new particulars concern further preparatory offence instead of stated offence - Whether particulars so uncertain as to be inadequate - Whether realistic potential connection between particularized intended conduct and objective thereof - Whether particulars render charge duplex - Criminal Code (Cth), s11.2A, s100.1, s117.1, s119.1 & s119.4; *The Queen v Cerantonio & Ors* (Rulings 1-11) [2017] VSC 725.

The Queen v Cerantonio, Robert Edward; Dacre, Paul James; Granata, Antonino Alfio; Thorne, Shayden Jamil; Kaya, Kadir and Kaya, Murat (Ruling 13)

Croucher J

[\[2018\] VSC 35](#)

09/02/2018

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 (Ruling No 2)

Beale J

[\[2018\] VSC 27](#)

06/02/2018

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 (Ruling No 3)

Beale J

[\[2018\] VSC 51](#)

13/02/2018

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.

COMPENSATION - Application for compensation pursuant to s86 of the Sentencing Act 1991.

Dutton Garage Wholesale Pty Ltd v Sandro Mark Terzini

[\[2017\] VCC 1991](#)

Judge Lewitan

6/2/2018

CONSTRUCTION OF CONTRACT - Sale of business - Nature of instalment payments required to be made by the purchaser - Whether the payments were payments of the purchase price or repayments of a loan made to the purchaser by vendor at settlement to enable vendor to pay purchase price.

TRUSTS - Whether business held in trust by purchaser until all instalment payments made - Whether fourth defendant knowingly received trust property.

Judgment: For the fourth defendant.

Roadrunner Industries Pty Ltd v Connell & Ors

[\[2018\] VCC 73](#)

Judge Marks

14/2/2018

CONTRACT FOR SALE OF INSURANCE BOOK - Construction of terms for calculating the purchase price - "Rise and fall" clause - Meaning of "subject to" - Breach - Repudiation.

Ford Kinter & Associates Pty Ltd v Reliance Franchise Partners Pty Ltd

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

Judge Woodward

31/1/2018

INSURANCE - Plaintiff seeking indemnity under insurance policy for stolen jewellery - Whether defendant entitled to deny indemnity on the basis the plaintiff did not reasonably substantiate ownership and valuation of the stolen items.

INSURANCE CONTRACTS ACT 1984 (Cth) - Whether plaintiff made fraudulent claim under s56 and failed to comply with duty of utmost good faith under s13 - Application of s54 and s31 in answer to denial of indemnity - Whether defendant entitled to cancel policy under s60.

EVIDENCE - Evidence Act 2008 (Vic) admissibility under s63 of evidence from overseas witnesses not called at trial - Application of coincidence rule under s98 arising from prior burglaries.

Ebrahim v AAI Limited t/as GIO Insurance

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

Judge A Ryan

1/2/2018

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.

Administrative Law

Fairness - Procedural fairness - Judicial review - Common law - Natural justice - Statutory powers - *Kioa v West* - *Saeed v Minister for Immigration and Citizenship* - *Annetts v McCann* - UK - Australia
Groves, M. "The unfolding purpose of fairness." (2017) 45(4) Fed L Rev 653-679.

Judicial deference doctrine - Rule of law - Common law - Separation of power - *Corporation of the City of Enfield v Development Assessment Commission* - *Chevron v National Resources Defence Council* - *Provincial Picture Houses Ltd v Wednesbury Corporation* - Comparative analysis - US - Canada - UK - Australia
Boughey, J. "Re-evaluating the doctrine of deference in administrative law." (2017) 45(4) Fed L Rev 597-625.

Judicial review - Access to justice - Canadian Constitution - Public law litigation - Legal ethics - Canadian Charter of Rights and Freedoms - Canada
Kennedy, G. and L. Sossin. "Justiciability, access to justice and the development of constitutional law in Canada." (2017) 45(4) Fed L Rev 707-723.

Judicial review - Proportionality - Statutory interpretation - Original intention - Legislative intent - Australian Constitution, s92, s116 - Motive evidence - Discrimination - Comparative analysis - US - Australia
Van Wees, N. "Judicial review of legislators' motives." (2017) 45(4) Fed L Rev 681-705.

Judicial review - Rule of law - Common law - Commonwealth Constitution, s73(ii), s75(v) - Separation of powers - Judicial power - Executive power - Government power - Supervisory jurisdiction - *S157/2002 v Commonwealth* - Australia

Aronson, M. "Between form and substance: minimising judicial scrutiny of executive action." (2017) 45(4) Fed L Rev 519-540.

Judicial review - Rule of law - Discretion - Common law - Fairness - Legislative power - Immigration Act 2009 (NZ), s177 - Bill of Rights (NZ) - *Provincial Picture Houses Ltd v Wednesbury Corporation* - New Zealand
Wilberg, H. "Interrogating 'absolute discretion': are NZ's parliament and courts compromising the rule of law?" (2017) 45(4) Fed L Rev 541-568.

Judicial review - Rule of law - Executive power - Separation of powers - Commonwealth Constitution, s51, s52, s75(v) - Plaintiff *S157/2002 v Commonwealth* - *Graham v Minister for Immigration and Border Protection* - *Commonwealth v Grunseit* - Australia
Crawford, L. "The entrenched minimum provision of judicial review and the limits of 'law'." (2017) 45(4) Fed L Rev 569-596.

Separation of powers - Judicial power - Executive power - Common law - Judicial review - Merits review - Unreasonableness - Judicial deference doctrine - Commonwealth Constitution - Administrative Decisions (Judicial Review) Act 1977 (Cth), s10(2)(b)(ii) - Administrative Appeals Tribunal Act 1975 (Cth), s44(7) - *Haritos v Commissioner of Taxation - Minister for Immigration and Citizenship v Li - Minister for Immigration and Border Protection v Singh* - Australia
Creyke, R. "Judicial review and merits review: are the boundaries being eroded?" (2017) 45(4) Fed L Rev 627-652.

Constitutional Law

Constitutional directive principles - Social values - Political constitutionalism - Legal constitutionalism - Legal status - India - Nigeria - New Zealand - UK - South Africa - US
Weis, L. "Constitutional directive principles." (2017) 37(4) Oxford JLS 916-945

Courts

Technology - Smartphones - Courtroom - Social media - Contempt of court - Public gallery - Criminal trials - Jury trials - Juries - UK
Lord Justice Singh. "Appeal judge warning over smartphone use." [2018] (Jan) Counsel 8.

Criminal Law & Procedure

Child sexual abuse - Vulnerable witness - Intimidated witness - Criminal evidence - Criminal proceedings - Cross-examination - Research study - Scotland
Andrews, S. and M, Lamb. "Cross-examining young alleged complainers in Scottish criminal courts." [2018] (1) Crim L R 34-57.

Gun control - Firearms - Appearance - Comparative analysis - Firearms Act 1996 (Tas) - Tasmania - Australia
Adams, S. "Judging a book by its cover: the challenges of prohibiting firearms by their appearance." (2017) 36(2) U Tas L R 49-67.

Vulnerable witness - Intimidated witnesses - Defendants - Non-defendant - Discrimination - Special measures - Youth Justice and Criminal Evidence Act 1999 (UK) - UK
Fairclough, S. "Speaking up for injustice: reconsidering the provision of special measures through the lens of equality." [2018] (1) Crim L R 4-19.

Human Rights

Inherent dignity - Status dignity - Authority - Corporate entities - UK
Valentini, L. "Dignity and human rights: a reconceptualisation." (2017) 37(4) Oxford JLS 862-885.

Prisons - Humanity - Mandela Rules - Justice reinvestment - International Covenant on Civil and Political Rights - ICCPR - Comparative analysis - ACT - Victoria - WA - Tas - NSW - NT - SA - Queensland - Australia
Mackay, A. "Article 10(1) of the International Covenant on Civil and Political Rights (ICCPR) and Australian prisons." (2017) 23(3) AJHR 368-389.

Refugees - Asylum seekers - Detention - National Preventative Mechanisms - NPM - Optional Protocol to the Convention against Torture - OPCAT - Ratification - Asia Pacific - Australia
McGregor, J. "The challenges and limitations of OPCAT National Preventative Mechanisms: lessons from New Zealand." (2017) 23(3) AJHR 351-367.

Medical Law

Consent - Autonomy - Capacity - Vulnerability - Necessity - Paternalism - Medical profession - Mental Capacity Act 2005 (UK) - UK

Cave, E. "Protecting patients from their bad decisions: rebalancing rights, relationships, and risk." (2017) 25(4) *Med L Rev* 527-553

Genetic modification - Germline modification - Genome editing - Mitochondrial replacement - CRISPR/Cas-9 - MRT - IVF - US - UK

Scott, R. and S. Wilkinson. "Germline genetic modification and identity: the mitochondrial and nuclear genomes." (2017) 37(4) *Oxford JLS* 886-915.

Negligence - Autonomy - Consent - Birth - Risk - Patients - Duty of care - Values - *Montgomery v Lanarkshire Health Board* - UK
Herring, J.et.al. "Elbow room for best practice? *Montgomery*, patients' values, and balanced decision-making in person-centred clinical care." (2017) 25(4) *Med L Rev* 582-603.

Practice & Procedure

Class actions - Opt-out - Collective claims - Certification - Consumer law - *Gibson v Pride Mobility Products Ltd* - Mobility Scooters - Competition Appeal Tribunal - Consumer Rights Act 2015 (UK) - US - Canada - Australia - UK

Mulheron, R. "The United Kingdom's new opt-out class action." (2017) 37(4) *Oxford JLS* 814-843.

Courts - Tribunals - Interpreters - Evidence - Accuracy - Language - Fairness - Immigrants - *Gaio v The Queen* - Australia

Justice Kunc. "Recommended national standards for working with interpreters in courts and tribunals." (2017) 91(12) *ALJ* 943-944.

Human rights - Discrimination - Deaf jurors - Auslan interpreters - Jury deliberation - *Lyons v Queensland* - United Nations Committee on the Rights of Persons with Disabilities - UNCRPD - Qld - NSW - Australia
Spencer, D.et.al. "Justice is blind as long as it isn't deaf: excluding deaf people from jury duty - an Australian human rights breach." (2017) 23(3) *AJHR* 332-350.

Restitution

Unjust enrichment - Mistaken payments - Theory - UK

Wilmot-Smith, F. "Should the payee pay?" (2017) 37(4) *Oxford JLS* 844-861.

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 lawlibrary.vic.gov.au



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.

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 articles received by the Library
- Victorian legislative updates
- High Court, Supreme Court of Victoria Court of Appeal and Trial Division 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.

Law Library of Victoria

210 William Street
Melbourne VIC 3000

