



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
2 March 2018

### Library News

#### 90th anniversary of the High Court Building exhibition

The Supreme Court is marking the 90th anniversary of the Former High Court building located at 450 Little Bourke Street with an exhibition in the Supreme Court library. As well as details about well-known cases and the building itself, on display is the ceremonial hat, gloves and shoes of the distinguished jurist Owen Dixon. These items are over 60 years old.

The first case was heard in the Former High Court building, before the full bench of the High Court in Court 1 on 20 February 1928.

Built when Melbourne was still the administrative capital of Australia, the building was designed by John Smith Murdoch. It was the home of the High Court of Australia for fifty years. Important cases were researched in its library and heard and decided in its courtrooms. From the 1970s until the 1999 the building was home of the Federal Court of Australia. During the 21st Century it has been used exclusively by the Supreme Court of Victoria.

You can pick up a specially commissioned booklet that details the history of the building and some of the famous cases and jurists associated with it. The booklet is available in the Supreme Court Library.

#### 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](mailto: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/](https://courts.sdp.sirsidynix.net.au/client/en_AU/llv/).

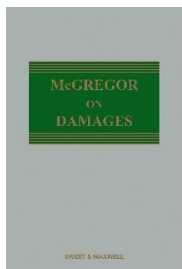
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



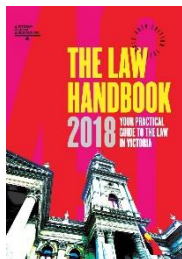
Bridge, M.G. (ed.), *Benjamin's sale of goods*  
10<sup>th</sup> ed., Sweet & Maxwell, London, 2018  
Call number: 346.072 Ben.10 (Supreme Court Library)

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



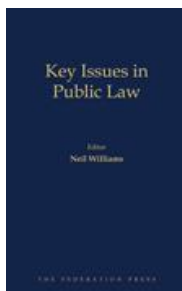
Edelman, James, *McGregor on damages*  
20<sup>th</sup> ed., Sweet & Maxwell, London, 2018  
Call number: 347.077 MCG.20 (Supreme Court Library, VCAT Library)

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



Saligar, Naomi (ed.), *The law handbook 2018*  
Fitzroy Legal Service Inc., Fitzroy, 2018  
Call number: Ref 349.945 LAW 2018 (Supreme Court Library, Magistrates' Court Library, VCAT Library)

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



Williams, Neil (ed.), *Key issues in public law*  
The Federation Press, Annandale, 2017  
Call number: 342.94 KEY (County Court Library)

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

# Legislation

## Victorian Bills

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

- [Emergency Management Legislation Amendment Bill 2018](#)
- [Parks Victoria Bill 2018](#)

## Victorian Assents

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

- [Bail Amendment \(Stage Two\) Act 2018](#) No. 3/2018
- [Health and Child Wellbeing Legislation Amendment Act 2018](#) No. 4/2018
- [Justice Legislation Amendment \(Victims\) Act 2018](#) No. 5/2018
- [Oaths and Affirmations Act 2018](#) No. 6/2018
- [Planning and Environment Amendment \(Public Land Contributions\) Act 2018](#) No. 7/2018
- [Road Safety Amendment \(Automated Vehicles\) Act 2018](#) No. 8/2018

## Proclamations

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

- [Children and Justice Legislation Amendment \(Youth Justice Reform\) Act 2017 No 43/2017](#)
  - Sections 4, 5, 20-22, 28, 29, 34, 35, 37, 39 of this Act come into operation on 26 February 2018 (SG406 28.11.2017)
- [Drugs, Poisons and Controlled Substances Amendment \(Medically Supervised Injecting Centre\) Act 2017 No. 66/2017](#)
  - Sections 1-12 of this Act come into operation on 28 February 2018 (SG71 27.2.2018)
- [Family Violence Protection Amendment \(Information Sharing\) Act 2017 No 23/2017](#)
  - Sections 1-27, 32-36, 38-45 of this Act come into operation on 26 February 2018 (SG40 6.2.2018)
- [Serious Sex Offenders \(Detention and Supervision\) Amendment \(Governance\) Act 2017 No 57/2017](#)
  - Sections 1-54 of this Act came into operation on 27 February 2018 (SG49 13.2.2018).



## 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

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

- *Family Violence Protection Amendment (Information Sharing) Act 2017 No 23/2017*
  - Section 31 of this Act came in by forced commencement on 26 February 2018 s.2(6)
- *Health and Child Wellbeing Legislation Amendment Act 2018 No. 3/2018*
  - Sections 1-3(1)(3), 4-7, 12(2), 16, 17, 20, 23, 25-29 of this Act came in by forced commencement on 28 February 2018 s.2(1)
- *Justice Legislation Amendment (Victims) Act 2018 No. 5/2018*
  - Parts 1-4 (sections 1-31), sections 34, 35, Parts 9, 10 (sections 42-44) of this Act came in by forced commencement on 28 February 2018: s.2(1)

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# High Court Cases

No High Court cases were delivered this fortnight.

# Victorian Supreme Court Cases

## Court of Appeal

ACCIDENT COMPENSATION - Appeal - Workplace injury - Serious injury - Serious injury application - Loss of earning capacity - Whether applicant would continue permanently to have loss of earning capacity of 40 per cent or more - Medical panels - Medical panel opinions - Relevance of medical panel reasons - Admissibility of medical panel reasons - Issue of permanence of particular incapacities falling to be dealt with upon whole of evidence - Evidence established that applicant would continue permanently to have loss of earning capacity of 40 per cent or more - Applicant granted leave to commence proceeding claiming pecuniary loss damages - Workplace Injury Rehabilitation and Compensation Act 2013, s272 and s313 - Accident Compensation Act 1985, s134AB(16)(b), (37) and (38)(e)-(f).

***Yirga-Denbu, Tilahun v Victorian WorkCover Authority***

Priest, Beach and Niall JJA

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

23/02/2018

CORPORATIONS - External administration - Winding up and receivership - Distribution of surplus - Insolvent corporate trustee - Trustee's right of indemnity by way of exoneration - Whether right of indemnity is 'property of the company' - Whether statutory priority regime applies - Re Enhill Pty Ltd [1983] 1 VR 561; Re Suco Gold Pty Ltd (in liq) (1983) 33 SASR 99; Re Independent Contractor Services (Aust) Pty Ltd (in liq) [No 2] (2016) 305 FLR 222; Lane (Trustee), Re Lee (Bankrupt) v Deputy Commissioner of Taxation considered - Corporations Act 2001 (Cth) s433, s555, s556, s560, s561.

***Commonwealth of Australia v Byrnes, Matthew James and Hewitt, Andrew Stewart Reed in their capacity as joint and several receivers and managers of Amerind P/L (receivers and managers appointed) (in liquidation); Morgan, Brent in his capacity as liquidator of Amerind P/L (receivers and managers appointed) (in liquidation) and Carter Holt Harvey Woodproducts Australia P/L. And Between: Carter Holt Harvey Woodproducts Australia P/L v Commonwealth of Australia; Byrnes, Matthew James and Hewitt, Andrew Stewart Reed in their capacity as joint and several receivers and managers of Amerind P/L (receivers and managers appointed) (in liquidation) and Morgan, Brent in his capacity as liquidator of Amerind P/L (receivers and managers appointed) (in liquidation)***

Ferguson CJ, Whelan, Kyrou, McLeish and Dodds-Streeton JJA

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

28/02/2018

COURTS AND JUDGES - Apprehended bias - Application to set aside statutory demand - Whether interchanges between associate judge and counsel demonstrated bias - Whether reference to duties of counsel in reasons demonstrated bias - Application for leave to appeal granted - Appeal dismissed - *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; *AJH Lawyers Pty Ltd v Careri* (2011) 34 VR 236 applied.

PRACTICE AND PROCEDURE - Reasons and orders - Reasons and orders delivered to parties via email - Orders not pronounced in open court - Whether mode of delivery rendered orders a nullity - Proposed ground of appeal not arguable - Application for leave to appeal refused - *Esso Australia Pty Ltd v Norman Lindsay Robertson* [2005] VSCA 138; *Di Benedetto v Granger Kilton Grange Pty Ltd* [2017] VSCA 119 applied.

***Bodycorp Repairers P/L (ACN 068 589 408) v Oakley Thompson & Co P/L (ACN 092 053 239)***

Ferguson CJ, Whelan and McLeish JJA

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

22/02/2018

CRIMINAL LAW - Appeal - Conviction - Incest and gross indecency - Applicant convicted on two charges of incest and two charges of gross indecency - Acquittals on the remaining seven charges of indecent assault and incest involving same complainant - Whether directions on uncharged acts were adequate - Whether judge invited tendency reasoning on significant uncharged act - Whether trial miscarried due to prosecution reliance on recent invention and absence of jury direction - Whether trial miscarried due to admission of hearsay evidence - Whether trial miscarried due to admission of evidence about accused's medical condition - Whether guilty verdicts were unreasonable or not supported by the evidence - Appeal upheld on one ground.

***Ritchie, Leona (a Pseudonym) v The Queen***

Tate, Kyrrou JJA and Beale AJA

[\[2018\] VSCA 31](#)

21/02/2018

CRIMINAL LAW - Appeal - Conviction - Indecent act with child under 16 - Whether verdict unreasonable - Oath-on-oath case - Whether good character and post-offence conduct inconsistent with guilt - Where credibility of complainant unchallenged on appeal - Open to jury to accept complainant's account - Leave to appeal refused.

***Harley, Brody (a Pseudonym) v The Queen***

Maxwell P, Niall JA, and Kidd AJA

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

26/02/2018

CRIMINAL LAW - Appeal - Interlocutory appeal - Evidence - Identification evidence - Probative value - Judge required to assume acceptance of evidence by jury - Consideration of credibility and reliability impermissible - Evidence taken at its highest - Whether danger of unfair prejudice - Consideration of practical consequences for defence - Appeal allowed - Exclusion application refused - *IMM v The Queen* (2016) 257 CLR 300 applied - Evidence Act 2008 s137, Jury Directions Act 2015 s32, s36.

***Director of Public Prosecutions [DPP] v Wearn, John (a Pseudonym)***

Maxwell P, Priest and Beach JJA

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

26/02/2018



CRIMINAL LAW - Appeal - Sentence - Crown appeal - One charge of producing child pornography, four charges of indecent act with child under 16, two charges of incest, one charge of possessing child pornography - Offences against respondent's stepdaughter over 2.5 year period when she was aged 12-14 - Sentenced to 4 years' imprisonment, with non-parole period of 2 years, 10 months - Whether manifestly inadequate - Incest offences involved persistence in face of protests and obvious distress on part of victim - Respondent recorded videos of incest offending and one indecent act - One video placed in shared Dropbox file to which at least one other person had access - Appeal allowed - Resentenced to 9 years, 7 months' imprisonment, with non-parole period of 7 years - DPP v Dalgliesh [2016] VSCA 148, DPP v Dalgliesh (2017) 349 ALR 37, DPP v Dalgliesh [2017] VSCA 360, referred to.

***Director of Public Prosecutions [DPP] v Tewksbury, Charlie (A Pseudonym)***

Tate, Kyrrou JJA, and Kidd AJA

[\[2018\] VSCA 38](#)

27/02/2018

CRIMINAL LAW - Appeal - Sentence - Extension of time - Contempt of court - Fresh evidence - New psychiatric opinion - New diagnostic label - Substance of diagnosis unchanged - Effect of condition known at time of sentence - Significant discount given - Appropriate recognition of causal connection - Whether subsequent improvement in condition relevant - No miscarriage of justice - No prospects of success - Application for extension of time refused - R v Verdins (2007) 16 VR 269 considered.

***Slaveski, Lupco v The Queen***

Maxwell P, Priest JA, and Kidd AJA

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

02/03/2018

CRIMINAL LAW - Appeal - Sentence - Fresh evidence on appeal - Recklessly cause serious injury - Glassing - Unprovoked attack on stranger in nightclub - Plea of guilty - Sentenced to 18 months' imprisonment with 18 month community correction order - Offender heavily intoxicated - Prior offence of violence when intoxicated - Drinking problem conceded on plea - No suggestion of causative psychological factors - Post-sentence psychologist's report - Diagnosis of borderline personality disorder - Whether admissible as fresh evidence - Not open to conduct different plea on appeal - Whether non-admission of evidence would cause miscarriage of justice - Sentence moderate in the circumstances - Appeal dismissed.

***Dang, Maryan v The Queen***

Maxwell P and Priest JA

[\[2018\] VSCA 43](#)

20/02/2018

CRIMINAL LAW - Appeal - Sentence - Serious drug offender - Eight State offences and one Commonwealth offence - Sentence of 20 years' imprisonment with non-parole period of 16 years - Whether sentencing judge erred in failing to consider pre-sentence detention and in applying State serious offender provisions in relation to Commonwealth offence - Crown concession - Error established - Whether individual sentences and orders for cumulation breached principle of totality - Whether sentence manifestly excessive - Appeal allowed - Re-sentenced to 18 years' imprisonment with non-parole period of 14 years - Sentencing Act 1991 pt 2A - Crimes Act 1914 (Cth) s19(3)(d).

***McKenzie, John Conway v The Queen***

Weinberg and Coghlan JJA

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

21/02/2018

CRIMINAL LAW - Appeal against conviction - Drug offences - Possession charges alternatives to trafficking charges - Whether judge's directions impermissibly fettered jury's freedom to order its deliberations - No error established - *Stanton v The Queen* (2003) 198 ALR 41 applied.

CRIMINAL LAW - Appeal against conviction - Possession of firearms while prohibited person - Shotgun and pistol in same gun bag - Applicant found guilty of possession of shotgun but not pistol - Whether verdicts inconsistent and irreconcilable - No error established - *Mackenzie v The Queen* (1996) 190 CLR 348 applied.

CRIMINAL LAW - Appeal against sentence - Whether judge erred by using fact that applicant was prepared to 'prey on others' despite experience as a drug addict adversely to him - Whether judge erred in failing to take into account punitive element of applicant's stay at residential rehabilitation facility while on bail - No error established - *Akoka v The Queen* [2017] VSCA 214 applied.

***Mourkakos, Peter v The Queen***

Whelan, Santamaria and Kyrou JJA

[\[2018\] VSCA 26](#)

20/02/2018

CRIMINAL LAW - Bail - Bail pending application for leave to appeal against sentence - Applicant sentenced to imprisonment for 4 weeks on 21 charges of contempt - Sentence will be fully served before application for leave to appeal heard - Proposed appeal would be rendered nugatory if bail not granted - Exceptional circumstances - Bail granted.

***Zhang, Ian Yan v 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***

Beach JA

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

02/03/2018

CRIMINAL LAW - Conviction - Application for leave to appeal against conviction - Conspiracy to import commercial quantity border controlled drug - Applicant's property searched twice - Drugs found on second search - Whether trial judge erred in refusing to exclude evidence of drugs found on second search - Whether probative value of evidence outweighed prejudicial effect - Leave to appeal granted - Appeal dismissed - Decision not to exclude correct and not productive of substantial miscarriage of justice - *IMM v The Queen* (2016) 257 CLR 300 applied - Evidence Act 2008 (Vic) s137.

CRIMINAL LAW - Conviction - Application for leave to appeal - Whether trial judge erred in refusing to exclude telephone conversation concerning domestic drug trafficking - Evidence relevant and admissible - Leave to appeal refused.

***Byrd, Michael (a Pseudonym) v The Queen***

Whelan, Beach and Kyrou JJA

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

CRIMINAL LAW - Crown appeal - Sentence - Murder - Whether sentence of 16 years' imprisonment with non-parole period of 13 years manifestly inadequate - Gravity of offending - Weight to be given to respondent's undertaking to give evidence at trial of accomplices - Appeal allowed - Respondent resentenced to 22 years' imprisonment with non-parole period of 18 years.

***Director of Public Prosecutions [DPP] v Arthur, Peter James***

Priest, Beach, and Kyrou JJA

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

27/02/2018

CRIMINAL LAW - Interlocutory Appeal - Application for review of judge's refusal to certify - Applicant being tried in County Court for domestic violence related charges and attempting to pervert course of justice - Applicant's partner exempted from obligation to give evidence as witness for prosecution - Reliance by prosecution on statements made to police - Whether hearsay evidence admissible under s65 of Evidence Act 2008 - Whether applicant's attempt to conceal 'hoodie' constituted incriminating conduct - Whether severance ought to have been granted - Application dismissed.

***Lewis, Gilbert (a Pseudonym) v The Queen***

Ferguson CJ, Weinberg JA, and Kidd AJA

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

27/02/2018

CRIMINAL LAW - Sentence - Appeal - Attempting to pervert the course of justice and attempting to obtain financial advantage by deception - Sentenced to 7 months' imprisonment with CCO of 30 months' duration - Whether disparity with sentence imposed on co-offender - Whether plea of guilty given too little weight - Whether sentence manifestly excessive - Sentence Manifestly Excessive - Appeal allowed.

***Gandhok, Shivraj v The Queen***

Priest and Beach JJA

[\[2018\] VSCA 29](#)

20/02/2018

CRIMINAL LAW - Sentence - Appeal - Intentionally causing injury - Stabbing - Applicant sentenced to 2 years' imprisonment with non-parole period of 14 months - Whether manifestly excessive - Leave to appeal against sentence refused.

***Vella, Samantha v The Queen***

Priest and Beach JJA

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

20/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Attempt to possess a marketable quantity of methamphetamine - Trafficking a marketable quantity of methamphetamine - Late guilty plea - Total effective sentence of 9 years' imprisonment - Non-parole period of 7 years' imprisonment - Whether judge took into account adverse factor not proved beyond reasonable doubt - Whether sentence manifestly excessive - Leave to appeal granted.

***Teoh, Ban Joo v The Queen***

Tate JA

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

19/02/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Found guilty by jury of five charges of rape and one charge of sexual assault - Total effective sentence of 13 years and 6 months' imprisonment - Non-parole period of 8 years - Whether manifestly excessive - Whether sufficient regard had to offences occurring in single incident - Serious sexual offender - Totality - Sentencing Act 1991, s6D(a), s6E - Leave to appeal granted.

***Zhao, Ye v The Queen***

Tate JA

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

19/02/2018

PRACTICE AND PROCEDURE - Applications for leave to appeal interlocutory decisions - Applicable principles considered - Supreme Court Act 1986 s14A, s14C.

PRACTICE AND PROCEDURE - Security for costs - Trial division judge ordered security for costs against applicant on rehearing de novo of application determined by judicial registrar - Application for leave to appeal - Whether trial judge gave undue weight to reasons of judicial registrar - Whether trial judge erred in concluding proceedings not defensive in nature - Whether trial judge erred in assessment of quantum of order for security for costs - No error in trial judge's reasons shown - Leave to appeal refused - *Interwest Ltd v Tricontinental Corporation Ltd* (1991) 5 ACSR 621 applied.

PRACTICE AND PROCEDURE - Application to rely on further evidence not before primary judge - Not reasonably clear evidence would have produced opposite result - Application refused.

***Bodycorp Repairers P/L (ACN 068 589 408) v GDG Legal P/L (ACN 132 838 469) and DSG Legal P/L (ACN 132 836 616)***

Ferguson CJ, Whelan JA, and McLeish JA

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

22/02/2018

## Commercial Court

CIVIL PROCEDURE - Settlement approval - Whether settlement of a group proceeding reasonable and fair - Whether legal costs are reasonable - Whether order as to payment of a compensation amount to litigation funder appropriate or necessary to ensure that justice is done in the proceeding - Section 33ZF the Supreme Court Act 1986 - Whether costs payable to litigation funder are reasonable - Sections 33V and 33ZF Supreme Court Act 1986.

CIVIL PROCEDURE - Application by special purpose receivers appointed by the Court for power to settle proceedings - Whether receivers are justified in exercising such power in entering into a deed of settlement - Whether settlement is just and reasonable - Section 37 Supreme Court Act 1986.

***Banksia Securities Ltd (ACN 004 736 458); The Trust Company (Nominees) Ltd (ACN 000 154 441); RSD Chartered Accountants (ABN 60 616 244 309) (formerly known as Richmond Sinnott and Delahunty); Godfrey, Patrick John; Carr, Nicholas Livingstone; Keating, Peter William; Skewes, Geoffrey Grenville; Lipshut, Geoffrey S A; Maxwell Brown & Mountjoy (a partnership); Lantern Legal Group P/L t/a Harwood Andrews; Insurance House P/L (ACN 006 500 072); The Channel Syndicate 2015; The Amtrust Syndicate 1206; Eleventh Third Party and Chaucer Syndicates Ltd v Lindholm, John Ross and McCluskey, Peter Damien in their capacity as joint and several special purpose receivers of Banksia Securities Ltd (Receivers and Managers Appointed) (In Liquidation) (ACN 004 736 458) and Banksia Securities Ltd (Receivers and Managers Appointed) (In Liquidation) (ACN 004 736 458)***

Croft J

[\[2018\] VSC 47](#)

16/02/2018

CORPORATIONS - Winding up - Trust assets - Trustee company in liquidation - Application by liquidators for directions under s511 of the Corporations Act 2001 (Cth) - Solicitors' lien - Trust funds held by solicitors acting for the trustee - Solicitors owed substantial fees for work carried out on behalf of the trustee - Solicitors claimed a possessory common law lien over all the trust funds held by them - Trustee acted as a bare trustee - Application for directions as to whether the liquidators had the power to and were justified in releasing the trustee's interest as trustee in the funds held by the solicitors to the extent of the solicitors' fees.

CORPORATIONS - Winding up - Application of the principles in *Re Universal Distributing Co Ltd (in liq)* to trust assets - Orders made under s63 of the Trustee Act 1958 authorising liquidators to release trust assets to solicitors to meet liabilities owed by the trustee and remove solicitors' lien over trust moneys insofar as the principles in *Re Universal Distributing Co Ltd (in liq)* did not apply.

CORPORATIONS - Winding up - Liquidation - Advice and directions given under s511 of the Corporations Act 2001 (Cth).

***In the matter of Mamounia P/L (in liq). Mamounia P/L (in liquidation) (ACN 007 091 349); Deane, Shane and Giasoumi, Nicholas in their capacity as joint and several liquidators of Mamounia P/L (in liquidation) (ACN 007 091 349) (No 3)***

Robson J

[\[2018\] VSC 65](#)

20/02/2018

EQUITY - Marshalling - Whether holder of second-ranking mortgage over 275 O'Hearns Road subrogated to CBA's rights in respect of 460 Cooper Street - Whether debt in favour of plaintiff arose after sale of 275 O'Hearns Road - Whether any agreement or binding arrangement as to order of sale.

CONTRACT - Release - Construction - Whether the right to marshal a claim 'arising out of the Retainer' - *Grant v John Grant & Sons Pty Ltd* (1954) 91 CLR 112.

EQUITY - Whether equity should assist - Whether plaintiff precluded from recovering more than he bargained for - Whether mortgagor gave fully informed consent - Whether grant of second-ranking mortgage in breach of terms of first-ranking mortgage - Effect of alleged non-compliance by plaintiff with obligations under Legal Practice Act 1996 (Vic) - Whether plaintiff otherwise engaged in disentitling conduct.

EQUITY - Whether unreasonable for plaintiff not to have advanced marshalling claim in previous County Court proceeding - *Port of Melbourne Authority v Anshun* (1981) 147 CLR 589.

MORTGAGES - Construction of mortgage and variation - Whether variation effects rescission or release of original mortgage.

EQUITY - Trusts - Declaration of Trust - Requirement of declaration evidenced in writing - s53(1)(c) Property Law Act 1958 (Vic) - Not capable of declaring trust on account of bankruptcy - s58 Bankruptcy Act 1966 (Cth).

EQUITY - Trusts - Constructive Trust - *Muschinski v Dodds* (1985) HCA 78 - *Baumgartner v Baumgartner* (1987) HCA 59 - Failure of substratum on account of bankruptcy - Non-financial contributions - Where contributions enable partner to acquire, maintain or improve property - lack of evidence to support pleaded assertions.

***Hill, Antony Christopher v Burness, Paul Andrew and Jess, Matthew James (in their capacity as trustees of the bankrupt estate of Thomas James Love) & Anor***

Sifris J

[\[2018\] VSC 29](#)

09/02/2018

FAMILY DISPUTE - Trial concluded - Judgment reserved - Judgment substantially completed - Parties informed of results on most substantive issues without reasons being published - Further opportunity to settle - Proceeding dismissed pursuant to settlement agreement - Civil Procedure Act 2010 (Vic), s7.

***De Lutis, Paul v De Lutis, Colin & Ors (No 2)***

Elliott J

[\[2018\] VSC 54](#)

02/03/2018

PRACTICE AND PROCEDURE - Discovery of documents - Privilege against self-incrimination or exposure to a penalty - Claim for breach of fiduciary duty and breach of sections 180(1), 181(1) and 182(1) of Corporations Act 2001 (Cth) - Whether defendant should be relieved of discovery obligation in limine.

***TTAC P/L (ACN 157 900 117) v Williams, Craig Edward***

Sifris J

[\[2018\] VSC 79](#)

27/02/2018

PRACTICE AND PROCEDURE - Security for costs - Jurisdiction enlivened - Dispute over quantum of security - Appropriate amount of security to be ordered - Trailer Trash Franchise Systems Pty Ltd v GM Fascia & Gutter Pty Ltd [2017] VSCA 293 - Supreme Court (General Civil Procedure) Rules 2015, r62.02(1) - Corporations Act 2001 (Cth), s1335(1).

***Citius Property P/L (ACN 102 392 923) v Logos Australia Group P/L (ACN 602 111 866)***

Matthews JR

[\[2018\] VSC 74](#)

23/02/2018

PRACTICE AND PROCEDURE - Summary judgment - Whether plaintiff has real prospects of success on its statement of claim - Where events subsequent to the filing of the statement of claim mean that the plaintiff has no real prospects of success - Civil Procedure Act 2010 (Vic), s62 and s63 - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27 - Application for summary judgment allowed.

***Enpresionante P/L (ACN 160 690 979) v Australian Securities Ltd (ACN 005 428 231) and Erfanian Developments P/L (ACN 140 457 601). And Between: Australian Securities Ltd (ACN 005 428 231) v Enpresionante P/L (ACN 160 690 979)***

Matthews JR

[\[2018\] VSC 87](#)

28/02/2018

SECURITY FOR COSTS - Liability and quantum issues heard separately - Plaintiffs paid substantial security for costs - Plaintiffs successful in liability trial - Quantum issues not yet heard or determined - Plaintiffs seek release of security - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r62.05 - Application refused.

***Ahrkalimpa P/L (ACN 164 529 533) & Anor v Schmidt, Alan Hessel & Anor (No 2)***

Elliott J

[\[2018\] VSC 68](#)

16/02/2018



## Common Law Division

ADMINISTRATIVE LAW - Application extension of time to seek leave to appeal to Supreme Court from the Victorian Civil and Administrative Tribunal ('VCAT') - Length of delay not unreasonable - Any prejudice allayed by expedited hearing - Application for extension of time granted.

PRACTICE AND PROCEDURE - Application for stay of VCAT decision pending appeal - Preservation of fruits of VCAT decision - Expedited hearing able to assuage detriment or prejudice to applicant - Application for stay refused.

***Elwick 9 P/L (ACN 610 147 290) t/as 9 Round Elsternwick v Freeman, Elliott; Sun, Li and Shearer, Heather (Ruling No 1)***

Quigley J

[\[2018\] VSC 90](#)

08/02/2018

ADMINISTRATIVE LAW - Judicial review - Victorian Civil and Administrative Tribunal - Greyhound racing - Review of decision of Racing Appeals and Disciplinary Board - Disciplinary offences - Whether proof of knowledge or awareness required - Whether defence of honest and reasonable mistake available - Appeal allowed in part - *Miller v Hilton* (1937) 57 CLR 400; *Proudman v Dayman* (1941) 67 CLR 537; *Day v Sanders* (2015) 90 NSWLR 764 referred to - *Racing Victoria Ltd v Kavanagh* [2017] VSCA 334 followed - Victorian Civil and Administrative Tribunal Act 1998 s148.

STATUTORY INTERPRETATION - Delegated legislation - Rules of greyhound racing - Racing Act 1958 s82, Greyhound Racing Victoria Local Racing Rules LR 18.5, Greyhounds Australasia Rules GAR 86(af).

***Greyhound Racing Victoria Stewards v Anderton, Paul***

Zammit J

[\[2018\] VSC 64](#)

28/02/2018

CONTRACT - Whether standard terms in a separate unsigned document incorporated into a signed contract - If so, whether the terms create a charge or only an obligation to give one on request - held that terms incorporated and created a charge - *Ange v First East Auction Holdings Pty Ltd* [2011] VSCA 335 applied.

PRIORITIES - Contest between a charge first in time given for equipment finance and later equitable mortgage given for business lending - Which is the 'better equity' - Comparison of conduct of each lender - Both lenders found to have been derelict to some degree - The charge first in time nevertheless postponed because the giving of it was not critical to the credit, whereas the grant of the mortgage was critical to the subsequent lending and this was reflected in the conduct of the respective lenders and documentation of the interests - *Clark v Raymor (Brisbane) Pty Ltd [No 2]* [1982] Qd.R. 790 considered.

***Gogetta Equipment Funding P/L (ACN 124 102 647) v Mark & Liz P/L (ACN 165 166 290)***

Lansdowne AsJ

[\[2018\] VSC 91](#)

01/03/2018



COSTS - Defamation - Defence of substantial truth established - Calderbank offers - Hazeldene principles - Indemnity costs - Whether offers were genuine offers to settle the case - Inadequate period of time allowed for acceptance of a number of the offers - Plaintiff able to respond to one offer - Whether the plaintiff's refusal of settlement offer requiring him to pay a sum of money, in the circumstances at the time of the offer, was unreasonable - Defamation Act 2005 (Vic), s40(2).

***Charan, Atkinson Prakash v Nationwide News P/L (Costs Ruling)***

J Forrest J

[\[2018\] VSC 89](#)

01/03/2018

COSTS - Proceeding settled on terms the defendants will pay the plaintiff's costs to be agreed or as determined by the Court - Application for indemnity costs - Where the defendants rejected the plaintiff's earlier offers of compromise - Where the settlement sum was significantly greater than the rejected offers - Whether a court can award indemnity costs after a 'no less favourable' settlement outcome - Supreme Court Act 1986, s24(1) - Supreme Court (General Civil Procedure) Rules 2015, rr 63.28 and 63.31 - Hazeldene's Chicken Farm Pty Ltd v Victorian WorkCover Authority (No 2) [2005] VSCA 298 considered - Ugly Tribe Co Pty Ltd v Sikola [2001] VSC 189 considered - Application refused.

***Amaca P/L (ACN 000 035 512) (Under NSW Administered Winding Up) v CSR Ltd (ACN 000 001 276) and Bradford Insulation Industries P/L (ACN 000 078 357) (Costs ruling)***

Macaulay J

[\[2018\] VSC 67](#)

21/02/2018

INSURANCE - Motor car insurance - Insured's statutory duty of disclosure to insurer - Additional driver nominated as beneficiary of policy - Insured person's statutory duty of disclosure of known matter relevant to risk before insurance contract is made or renewed - Renewal effected by beneficiary with knowledge of matter relevant to risk - Matter unknown to insured - Non disclosure by beneficiary - Whether renewal was effected by beneficiary as agent for insured - Whether agent's knowledge of disclosable matter is imputable to insured as principal - Insurance Contracts Act 1984 (Cth) s21, s48.

***Allianz Australia Ltd v Taylor, Danielle and Tayeh, Hayasheam***

Mukhtar AsJ

[\[2018\] VSC 78](#)

26/02/2018

JUDICIAL REVIEW - Practice and procedure - Discovery - Application for discovery in judicial review proceeding.

***Australian Society for Kangaroos Inc. v Secretary, Department of Environment, Land, Water and Planning and Secretary, Department of Economic Development, Jobs, Transport and Resources***

Ginnane J

[\[2018\] VSC 88](#)

28/02/2018

JUDICIAL REVIEW - Victorian Civil and Administrative Tribunal - Whether error of law - Whether it was open to Victorian Civil and Administrative Tribunal to appoint administrator to applicant's estate - No error of law - Application for leave to appeal refused - Victorian Civil and Administrative Tribunal Act 1998 s148 - Guardianship and Administration Act 1986 s46(1), s61.

***Close, Benjamin v Victorian Civil and Administrative Tribunal and State Trustees Ltd***

T Forrest J

[\[2018\] VSC 71](#)

22/02/2018

JUDICIAL REVIEW AND APPEALS - Appeal from refusal to extend limitation period - Claim for damages for personal injury for medical negligence - Whether error in exercise of discretion - Appeal allowed - Limitation of Actions Act 1958 (Vic) s27K, s27L, Supreme Court (General Civil Procedure) Rules 2015 (Vic), r77.06.

LIMITATION OF ACTIONS - Personal injury - Application to extend limitation period - Whether extension would be 'just and reasonable' - Synthesising exercise - Limitation of Actions Act 1958 (Vic) s27K, s27L.

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

John Dixon J

[\[2018\] VSC 55](#)

27/02/2018

JUDICIAL REVIEW AND APPEALS - Road safety - Traffic infringements - Licence suspended after 12 demerit points incurred - Appeal to the Magistrates' Court of Victoria - Scope of permitted appeal - Grounds of appeal - Permissible orders - Order in the nature of certiorari - Decision and orders of Magistrates' Court beyond jurisdiction - Misconstruction - Decision and orders quashed - Road Safety Act 1986 (Vic), s43(2) and 46H.

***The Roads Corporation (trading as VicRoads) v Numa, Gregory Charles and The Magistrates' Court of Victoria***

Garde J

[\[2018\] VSC 70](#)

22/02/2018

LEGAL PRACTITIONERS - VCAT recommendation that lawyer's name be removed from the roll of practitioners - Application that practitioner's name be removed - Professional misconduct - Previous professional disciplinary history of misconduct and unsatisfactory conduct - Order that practitioners name be removed from the roll - Supreme Court (Miscellaneous Civil Proceedings) Rules 2008 (Vic), r14.13 - Legal Profession Uniform Law Application Act 2014 (Vic), sch 1 s23(1)(c).

***Victorian Legal Services Commissioner v Hession, Robert Anthony Brendon***

J Forrest J

[\[2018\] VSC 38](#)

01/03/2018

PRACTICE AND PROCEDURE - Application by third defendant to join third parties out of time - Whether application was made promptly - Consideration of competing rights of parties - Civil Procedure Act 2010 (Vic) s7 - Supreme Court (General Civil Procedure) Rules 2015 (Vic) Order 11 - Application refused.

***Jack, Michael (by his litigation guardian Daniel Jack) v Koutsioulis, Nicholaos; Blias, Effie and Flynn & Co. Real Estate P/L (ACN 127 107 484)***

Clayton JR

[\[2018\] VSC 72](#)

23/02/2018

PRACTICE AND PROCEDURE - Application to stay execution of a warrant of possession - Applicable considerations - Judgment given to plaintiffs to recover possession of land pursuant to summary procedure - Stay of execution given - Application made in Family Court of Australia to set aside Deed of Settlement pursuant to which defendant agreed to give possession of the land to plaintiffs - Stay refused - Supreme Court (General Civil Procedure) Rules 2015, r66.16 - The inherent jurisdiction of the Court.

***Abikhair, Raymond Leslie and RLA Investments P/L (ACN 120 432 939) v Ali, Iman***  
Derham AsJ

[\[2018\] VSC 93](#)

02/03/2018

PRACTICE AND PROCEDURE - Leave to amend particulars of claim - Revocation of will - Limited amendments to particulars allowed.

***In the matter of the Will of Peter Demediuk (deceased). Demediuk, Barbara v Demediuk, Peter Mark; Willis, Sandra and Demediuk, Nicholas Ivan (No 3)***

McMillan J

[\[2018\] VSC 86](#)

27/02/2018

TRUSTEES - Application to remove trustee - Conflict of interest and duty - Trustee removed. ***In the matter of the Davern Family Super Fund and In the matter of an application pursuant to sections 48 and 51 of the Trustee Act 1958 and In the matter of an application by Ainsworth, Elizabeth pursuant to rule 54.02 of the Supreme Court (General Civil Procedure) Rules 2015. Ainsworth, Elizabeth v Davern, Pamela Joy***

McMillan J

[\[2018\] VSC 80](#)

23/02/2018

WILLS AND ESTATES - Multiple wills - Interpretation of home-made wills - Whether tontine - Whether absolute gift or life interest - Whether partial intestacy.

***In the matter of an application pursuant to Rule 54.02 of the of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) for the determination of questions arising in the administration of the estate of Islik, Adil deceased. Between: Kimmer, Michael & Ors v Kaynak, Ilkan and Ganzel, Inge Gretel Elisabeth (as executors of the Will and trustees of the estate of Adil Islik deceased) and Ambroz, Zofija (as the representative of the next of kin); And between Ganzel, Inge Gretel Elisabeth and Kaynak, Ilkan (who sue as the executors of the Will and Estate of Adil Islik, deceased) v Kimmer, Michael; Schmidmeier, Sigmund; Lena Constructions P/L (ACN 004 651 021); Intercity Homes P/L (ACN 006 633 594); Magdalena Investments P/L (ACN 169 620 571) and Ambroz, Zofija (as the representative of the next of kin)***

Riordan J

[\[2018\] VSC 59](#)

15/02/2018

## Criminal Division

CRIMINAL LAW - Applications for bail - Co-applicants - Show cause situation - Drug trafficking offences - Applicants alleged to be in possession of illicit drugs while travelling to a music festival together - Bail refused to Mahoney but granted to Gomide.

***In the matter of an application for Bail by Mahoney, Martin and In the matter of an application for Bail by Gomide, Pedro***

Beale J

[\[2018\] VSC 66](#)

19/02/2018

CRIMINAL LAW - Attempted Murder - Accused stabbed parents repeatedly - Consent mental impairment hearing before judge alone - Verdict recorded of not guilty because of mental impairment - Accused declared liable to supervision - Matter adjourned so that further report and certificate of available services might be obtained - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

***Director of Public Prosecutions [DPP] v Batikas, Christos***

Champion J

[\[2018\] VSC 61](#)

16/02/2018

CRIMINAL LAW - Attempted Murder - Consent mental impairment hearing before judge alone - Verdict recorded of not guilty because of mental impairment - Accused declared liable to supervision - Matter adjourned so that further report and certificate of available services might be obtained - Crimes (Mental Impairment and Unfitness to be Tried) Act 1997.

***The Director of Public Prosecutions [DPP] v Katu, Cody***

Champion J

[\[2018\] VSC 63](#)

19/02/2018

CRIMINAL LAW - Bail - Appeal against refusal - Recklessly causing injury and unlawful assault - Contravening a family violence intervention order - Whether applicant shows cause - Whether applicant poses unacceptable risk - Bail refused - Bail Act 1977 s4(4).

***In the matter of the Bail Act 1977 and In the matter of an Application for bail by Williams, Dale David***

Champion J

[\[2018\] VSC 76](#)

23/02/2018

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 (third) indictment and particulars filed over previous indictment following earlier rulings - Whether new particulars still so uncertain as to be inadequate - Whether realistic potential connection between particularized intended conduct and objective thereof - Whether particulars render charge duplex or risk uncertain verdicts - 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 & Ors (Ruling 13) [2018] VSC 35.

***The Queen v Cerantonio, Robert Edward; Dacre, Paul James; Granata, Antonino Alfio; Thorne, Shayden Jamil; Kaya, Kadir and Kaya, Murat (Ruling 15)***

Croucher J

[\[2018\] VSC 77](#)

28/02/2018

CRIMINAL LAW - Sentence - Assist offender - s325(1) Crimes Act - Guilty plea - Providing petrol to principal offender to enable incineration of body and helping sand floorboards to eliminate forensic evidence of murder - Sentenced to 4 years NPP 2 years.

***Director of Public Prosecutions [DPP] v Marmo, Luke***

Jane Dixon J

[\[2018\] VSC 31](#)

23/02/2018

EVIDENCE - Public interest immunity - Accused is charged with murder - Defence of self-defence - Matters of State - Evidence Act 2008 s130 and s131A.

***The Queen v Yucel, Kamil (Ruling No 5)***

Beale J

[\[2018\] VSC 69](#)

20/02/2018

# 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.

ACCIDENT COMPENSATION - Recovery action - Jockey injured in thoroughbred trial - Breach of duty - Causation.

***VWA v Racing Victoria Limited***

[\[2018\] VCC 124](#)

Judge Dyer

23/02/2018

COSTS - Where stay application made under section 20 Service and Execution of Process Act 1992 (Cth).

***L&H Group v Edwards No 2***

[\[2018\] VCC 119](#)

Judge Marks

23/2/2018

COSTS

***Ebrahim v AAI Limited t/as GIO Insurance (No 2)***

[\[2018\] VCC 142](#)

Judge A. Ryan

27/2/2018

INTEREST - Judgment for 'sum certain' under s58 Supreme Court Act 1986 (Vic) - Whether interest should be calculated from the date the debt was due or the date of issue of proceedings - Whether interest rate should be under the rate prescribed by Penalty Interest Rate Act 1983 (Vic) or at the contract rate of 5% per annum - Interest ordered at contract rate from date debt due.

COSTS - OFFER OF COMPROMISE - Plaintiff had more favourable judgment than she offered to accept in an Offer of Compromise under Order 26 of the County Court Civil Procedure Rules 2008 (Vic) - Whether Court should order indemnity costs from two days after the date the Offer of Compromise was served, or 'order otherwise' - Whether offer genuine - Indemnity costs ordered.

***Polacsek v Patek (No. 2)***

[\[2018\] VCC 156](#)

Judge Marks

1/3/2018

PRACTICE AND PROCEDURE - Whether leave should be granted for lay person to represent defendant - McKenzie friend - Requirement for independent interpreter.

EQUITY - Subrogation - General principles - Where third party has paid off mortgage - Presumption that third party intends to keep mortgage alive for its own benefit.

***CBA v Iloska & Anor***

[\[2018\] VCC 144](#)

Judge Cosgrave

23/2/2018

PRACTICE AND PROCEDURE - Self-executing orders - Effect of failure to comply - Judgment entered following noncompliance with self-executing order - Subsequent application to extend time for compliance - Matters relevant to exercise of discretion - Whether failure to comply wilful.

***Nunn v Australian Institute of Trades Pty Ltd***

[\[2018\] VCC 38](#)

Judge Cosgrave

2/2/2018

PROFESSIONAL NEGLIGENCE - Solicitor retained in proceedings at VCAT where applicant alleged discrimination in employment - Retainer on a 'no win, no fee' basis - Allegations of negligence in preparation of the proceeding - Briefing of counsel on a fee-paying basis - By whom and in what circumstances retainer terminated - Applicant expressed 'loss of confidence' in legal team who withdrew - Allegations of failure to accept reasonable advice when settlement offer made - Proceeding adjourned and new practitioners appointed - Application subsequently lost - Whether breach of retainer or breach of duty by solicitors - Nature and extent of damages.

***Finch v Arnold Thomas & Becker Pty Ltd***

[\[2018\] VCC 54](#)

Judge O'Neill

13/2/2018

REAL PROPERTY - Contract for Sale of Land - Sale of Land Act (Vic) 1962 - Where vendor did not include information about a current planning permit required to be included in the s32 statement - Whether purchaser entitled to rescind the contract under s32K of the Sale of Land Act (Vic) 1962 - Whether vendor acted honestly and reasonably - Whether conveyancer employed by vendor was agent of vendor in preparing the s32 statement - Whether the purchaser was in substantially as good a position as if information about the planning permit had been included.

***Downing v Lau***

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

Judge Marks

20/2/2018

REVIEW OF DECISION OF JUDICIAL REGISTRAR

***The Aslan Group LLC & Ors v Pepperstone Group Limited & Ors***

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

Judge Cosgrave

7/2/2018

# Magistrates' Court of Victoria Judgments

Following is a selection of judgments recently handed down in the Magistrates' Court of Victoria.

These judgments 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.

CRIMINAL - Alleged breach of s 21(1) & 21(4) of Occupational Health and Safety Act 2004 - 'Arc flash' incident on 24 June 2015 whereby employee sustained burns to face and hands whilst working on a switchboard in sub-station.

***VWA V Paper Australia Pty Ltd***

[\[2018\] VMC 01](#)

Magistrate S Garnett

12/01/2018

WORKERS COMPENSATION - Whether plaintiff a 'worker' pursuant to s 3 of the Workplace Injury Rehabilitation and Compensation Act 2013 - Credibility of witnesses in issue.

***Severino v Tsaousidis***

[\[2018\] VMC 02](#)

Magistrate S Garnett

26/02/2018



# 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.

## Courts

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High Court of Australia - Historical - Court buildings - Restoration - Victoria  
**Ford, C.** "New life for former High Court." (2018) 92(1/2) LIJ 83-84.

## Criminal Law & Procedure

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Criminal trials - Sentencing - Guilty plea - Reduced sentence - Sentence discount - Sentencing guidelines - *Barbaro v The Queen - DPP (Cth) v Thomas - Phillips v R - DPP (Cth) v Okoka - Crimes Act 1914 (Cth), s16A(2)(g) - Sentencing Act 1991 (Vic), s5(2)(e) - Victoria - Australia*  
**Field, A.** "A pragmatic justice." (2018) 92(1/2) LIJ 24-27.

## Jurisprudence

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Constitutional law - Constitutional law theory - Constitutional dialogue - Declarations of inconsistency - Counter-majoritarian difficulty - Legislative - Judiciary - Human Rights - Attorney-General v Taylor - Bill of Rights Act (NZ) - NZ  
**Sirota, L.** "Constitutional dialogue: the New Zealand Bill of Rights Act and the noble dream." (2017) 27(4A) NZULR 897-917.

## Legal Profession

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Personalia - Legal Services Commissioner Fiona McLeay - Legal services - Justice Connect - Victoria  
**Derkley, K.** "Commissioner aims to be good cop." (2018) 92(1/2) LIJ 22.

## Medical Law

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Maternal rights - Foetal rights - Prenatal duty of care - Pregnancy - Risk to foetus - In-utero harm - Rights of unborn child - Medical treatment - Refusal - Ethics - Foetal alcohol syndrome - Legal personhood - European Convention on Human Rights, Art 2, Art 8(1)(2) - A-G's Reference (No.3 of 1994) - *Winnipeg Child and Family Services v G - Law reform proposals - EU - UK*  
**Foster, C. and J. Savulescu.** "Separated at birth?" (2018) 168(7775) NLJ 8-9.

Organ donation - Organ Donor Register - Conditional donation - Consent - Appropriate consent - Presumed consent - No property principle - Deceased body - Ownership - Next of kin - The Human Tissue Act - Law reform proposals - Comparative laws - Australia - UK - France - NZ  
**Bhatia, N. and J. Tibballs.** "The development of property rights over cadaveric tissues and organs: legal obstructions to the procurement of organs in an "opt-out" system of organ donation in Australia and New Zealand." (2017) 27(4A) NZULR 946-974.

## Practice & Procedure

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Recusal - Judges - Legal practitioner - Judicial officer - Disclosure - Bias - Consequences - Court procedure - Ethics - Court of Appeal - *Vanderbilt v Azumi and others - Porter v Magill - Watts v Watts - Singh v Secretary of State - UK*  
**Amunwa, B.** "Standing aside." (2018) 168(7775) NLJ 18.

## Practice & Procedure (con't)

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Costs - Security for costs - Deed of indemnity - Assets - Forms of security - DIF III Global Co-Investment Fund LP - Anor v BBLP LLC and Ors - Australian Property Custodian Holdings Ltd (in liq) v Pitcher Partners - UK - Australia - Victoria  
**Clement, S.** "A novel approach." (2018) 92(1/2) LIJ 40-43.

Remedies - Private law - Damages - Specific performance - Injunctions - Contract - Tort - Equity - Injustice - Restitution - Shelfer v City of London Electric Lighting Co - NZ  
**Smith, S.** **Rights-Threats, Wrongs and Injustices: The Common Law's Causes of Action** (2017) 27(4B) NZULR 1033.

## Property Law

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Easements - Owners - Recreational sport - Leisure facilities - Open spaces - Land use - Recreational activities - Validity - Positive obligations - Regency Villas Title Ltd v Diamond Resorts (Europe) Ltd - Re Ellenborough Park - UK  
**Bray, J.** "More than just a walk in the park: a new view on recreational easements." [2018] (6) Conv. 418-439.

## Torts

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Cyclists - Stationary vehicles - Collision with parked car - "travelling to and from place of employment" - Injury - Impairment - Accident compensation - Transport Accident Act 1986 (Vic), s3(1A)(c) - Wilson v Transport Accident Commission - Law reform proposals - Victoria  
**Burgoyne, T.** "Cyclists beware." (2018) 92(1/2) LIJ 36-39.

Negligence - Contributory negligence - Liability - Damages - Illegality - Holman v Johnson - Patel v Mirza - UK  
**Erbacher, S.** "Another misstep in negligence and illegality." (2017) 27(4B) NZULR 1060-1086.

## Torts (con't)

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Privacy - Misuse of private information - Public disclosure - Intrusion of privacy - Surveillance - Gulati v MGN - Vidal-Hall v Google - Comparative analysis - USA - NZ - Canada - UK - Australia  
**Hartshorne, J.** "The need for an intrusion upon seclusion privacy tort within English law." (2017) 46(4) CWLR 287-305

## Trusts

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Charities - Charitable purpose - Not-for-profit - Charitable status - Taxation - Public confidence - Public benefit - Governance - Regulation - Australian Charities and Not-for-Profit Commission - NZ - Australia  
**Martin, F.e.al.** "The rise and fall (?) of two charities commissions: how common law countries can learn from the experiences in New Zealand and Australia." (2017) 27(4B) NZULR 1185-1214.

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- High Court, Supreme Court of Victoria Court of Appeal and Trial Division judgments.

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