



## THE LAW LIBRARY OF VICTORIA

Library  
Bulletin  
13 April 2018

## Library News

### Switch On...JADE

Thursday 3 May, 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.

JADE is a freemium Australian current awareness service and legal research platform designed to make it easier to find, use, share and present accurate legal information. This session will enable you to perform faster-than-normal complex searches to identify case law, legislative points and keypoints in authorities.

All are welcome and entry is free. To RSVP please email [libraryevents@supcourt.vic.gov.au](mailto:libraryevents@supcourt.vic.gov.au)

### Law Week 14-20 May 2018

Law Week is an annual festival of events that makes learning about the law easy. Held in May each year, Law Week has taken place across Victoria since 1980. More information about Law Week events can be found on the [Law Week website](#).

### 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](mailto: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

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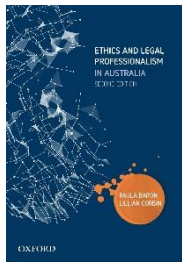
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# New Books

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



Baron, Paula, and Corbin, Lillian, *Ethics and legal professionalism in Australia*

2<sup>nd</sup> ed., Oxford University Press, South Melbourne, 2017

Call number: 174.3 BAR.2 (Supreme Court Library)

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



LexisNexis, *Australian corporations legislation*

2018 ed., LexisNexis Butterworths, Chatswood, 2018

Call number: 346.066 (Supreme Court Library)

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

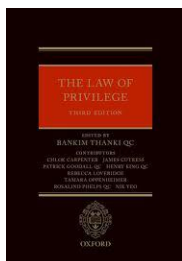


Rees, Neil, Rice, Simon, Allen, Dominique, *Australian anti-discrimination and equal opportunity law*

3<sup>rd</sup> ed., The Federation Press, Annandale, 2018

Call number: 342.94085 REE.3 (Supreme Court Library, VCAT Library)

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



Thanki, Bankim (ed), *The law of privilege*

3<sup>rd</sup> ed., Oxford University Press, Oxford, 2018

Call number: 347.066 LAW.3 (Supreme Court Library)

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

# Legislation

## Victorian Bills

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

## Victorian Assents

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

- [\*Children Legislation Amendment \(Information Sharing\) Act 2018\*](#) No. 11/2018

## Proclamations

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

- *Bail Amendment (Stage Two) Act 2018* No. 3/2018
  - Sections 1-2, 26-30 of this Act came into operation on 5 April 2018 (SG136 27.3.2018)
- *Children and Justice Legislation Amendment (Youth Justice Reform) Act 2017* No. 43/2017
  - Sections 23-27, 36, 38, 41-51 of this Act came into operation on 5 April 2018 (SG136 27.3.2018)
- *Crimes Legislation Amendment (Protection of Emergency Workers and Others) Act 2017* No. 65/2017
  - Sections 1-20, 24(1), 25 of this Act came into operation on 5 April 2018 (SG136 27.3.2018)
- *Family Violence Protection Amendment Act 2017* No. 19/2017
  - Sections 4-31, 33-40, Part 6 (sections 56-58), Part 9 Division 1 (section 64) of this Act came into operation on 29 March 2018 (SG136 27.3.2018)
- *Health Legislation Amendment (Quality and Safety) Act 2017* No. 52/2017
  - Sections 6-32, 45-59, Part 3 (sections 69-79), sections 80-88 of this Act came into operation on 1 April 2018 (SG96 6.3.2018)
- *Justice Legislation Amendment (Body-worn Cameras and Other Matters) Act 2017* No. 54/2017
  - Sections 1, 2, 8-10 of this Act came into operation on 1 April 2018 (SG136 27.3.2018)
- *Justice Legislation Amendment (Protective Services Officers and Other Matters) Act 2017* No. 45/2017
  - Parts 1, 2 (sections 1-19), Part 5 (sections 50-58), section 59, Part 7 (section 61) of this Act came into operation on 1 April 2018 (SG136 27.3.2018)

## 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

- *Justice Legislation Amendment (Victims) Act 2018 No. 5/2018*
  - Sections 32, 33, Parts 6-8 (sections 36-41) of this Act came into operation on 5 April 2018 (SG136 27.3.2018)
- *Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017 No. 68/2017*
  - Part 3.4 (section 108) of this Act came into operation on 2 April 2018 (SG136 27.3.2018)

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

## High Court Cases

MIGRATION - Refugees - Appeal as of right from Supreme Court of Nauru - Where Secretary of Nauru Department of Justice and Border Control determined appellant not refugee and not entitled to complementary protection - Where Refugee Status Review Tribunal affirmed Secretary's determination - Where Tribunal adopted reasoning of Secretary - Whether Tribunal failed to consider country information before it - Whether Tribunal acted in way that was procedurally unfair by failing to put to appellant nature and content of country information it relied upon.

WORDS AND PHRASES - "appeal", "country information", "procedural fairness".

***WET044 v The Republic of Nauru***

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

11/04/2018

# Victorian Supreme Court Cases

## Court of Appeal

CRIMINAL LAW - Appeal - Conviction and sentence - Applicant convicted by jury of one charge of rape - Sentenced to five years and six months' imprisonment with a non-parole period of three years - Complainant told applicant several times that she either 'want[ed] to go home' or 'just want[ed] to go home' while at his apartment - Whether applicant's belief in consent reasonable in circumstances - Open to jury to find no reasonable basis for belief in consent - Verdict not unsafe or unsatisfactory - Whether 'fresh evidence' in Victim Impact Statement, if known, would have impugned complainant's credibility - Nothing in Victim Impact Statement that would have given rise to reasonable doubt - Whether sentence manifestly excessive - Sentence within range - Crimes Act 1958 s37G - *M v The Queen* (1994) 181 CLR 487, *Libke v The Queen* (2007) 230 CLR 559, *R v Klamo* (2008) 18 VR 644 - Application for leave to appeal refused.

***Bakshi, Ashish v The Queen***

Weinberg, Kyrrou JJA, and Jane Dixon AJA

[\[2018\] VSCA 83](#)

09/04/2018

CRIMINAL LAW - Appeal - Conviction - Sexual penetration of and indecent acts with a child under 16 - Other misconduct evidence - Text messages sent between appellant and complainant - Failure of trial judge to give anti-propensity warning - Whether substantial miscarriage of justice resulted - Appeal allowed - Jury Directions Act 2015 s16, s29.

***Quinn, Toby (a Pseudonym) v The Queen***

Weinberg, Priest JJA, and McDonald AJA

[\[2018\] VSCA 82](#)

09/04/2018

CRIMINAL LAW - Appeal - Leave to appeal - Verdicts of guilty on charges of rape and attempted rape - Acquittals on other charges alleging sexual offences - Whether verdicts inconsistent - Leave to appeal refused.

***Zhao, Yingqi v The Queen***

Beach, Hargrave JJA, and Ashley JA

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

12/04/2018

CRIMINAL LAW - Appeal - Sentence - Attempting to possess a commercial quantity of border-controlled drug and trafficking in a large commercial quantity of drug of dependence (cocaine) - Sentenced to ten years' imprisonment with six year non-parole period - Whether manifestly excessive - Youthful offender - Guilty plea - Appellant had principal role in criminal enterprise - Appeal dismissed - *R v Nguyen* (2010) 205 A Crim R 106 applied.

***Hoang, Quyen Van v The Queen***

Priest and McLeish JJA

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

09/04/2018

CRIMINAL LAW - Appeal - Sentence - Rape and indecent assault - Multiple offences in the course of single transaction - Whether sentences should be concurrent or cumulative - Whether orders for cumulation manifestly excessive - Relevance of appellant spending two years in immigration detention between arrest and sentence - Effect of delay - Appeal allowed - Appellant resentenced - R v Renzella [1997] 2 VR 88 discussed.

***Underwood, Zachary (a Pseudonym) (No 2) v The Queen***

Priest and McLeish JJA

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

09/04/2018

CRIMINAL LAW - Appeal - Sentence - Two charges of incest - Total effective sentence of eight years with a non-parole period of five years - Whether sentencing judge erroneously classified the offending as 'mid-range' - Relevance of sentencing practices at the time of offending where there has been delay - Stalio v The Queen (2012) 46 VR 426 considered - Whether sentence manifestly excessive - Appeal dismissed.

***Carter, Jonathan (a Pseudonym) v The Queen***

Weinberg, Beach and Hargrave JJA

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

11/04/2018

CRIMINAL LAW - Sentence - Appeal - Attempted armed robbery - Sentenced to imprisonment for 1 year and 292 days and 3 year community correction order - Judge mistook applicant's prior criminal history - No reference in judge's reasons to applicant's early plea of guilty - Offending at lowest level - Offending by homeless applicant - Offending for purpose of obtaining 'a roof over his head and some good meals' - Specific error established - Appeal allowed - Term of imprisonment set aside - Applicant resentenced to imprisonment for 1 year - Community correction order confirmed.

***McCarthy, Peter v The Queen***

Beach and Ashley JJA

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

13/04/2018



SUMMARY JUDGMENT - Contract - Asset sale agreement - Where parties appointed expert to value livestock - Whether expert made valuation in accordance with agreement - Whether expert failed to act impartially - Where summary judgment granted - No real prospect of success - Leave to appeal refused.

CONTRACT - Construction and interpretation - Asset sale agreement - Expert valuation - Where agreement required expert to value livestock 'inclusive of any progeny' - Where expert valued merino lambs and ewes as a single unit - Whether expert made valuation in accordance with terms of agreement.

CONTRACT - Expert valuation - Implied duty of impartiality - Where party alleged that expert acted with partiality - Whether valuation can be set aside on ground of apprehended partiality - *Collier v Mason* (1858) 25 Beav 200, *Legal & General Life of Australia Ltd v A Hudson Pty Ltd* (1985) 1 NSWLR 314, *Holt v Cox* (1997) 23 ACSR 590 and *Beevers v Port Phillip Sea Pilots Pty Ltd* [2007] VSC 556 discussed.

COURTS AND JUDGES - Apprehended bias - Independent experts - Application of principles of apprehended bias to independent experts - Whether expert made valuation other than on merits or in accordance with terms of agreement - *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 discussed.

***The Gull Lexington Group P/L (ACN 118 870 198) v Laguna Bay (Banongill) Agricultural P/L (ACN 612 769 632)***

Santamaria JA and McDonald AJA

[\[2018\] VSCA 85](#)

10/04/2018

TRUSTS AND TRUSTEES - Breach of trust - Knowing assistance - Where corporate trustee committed fraudulent breach of trust - Where director of corporate trustee held liable as knowing assistant under second limb of *Barnes v Addy* (1874) 9 Ch App 244 - Where trial judge dismissed claim against another third party - Whether third party assisted trustee with knowledge of trustee's dishonest and fraudulent design.

EQUITY - Accessorial liability - Knowing assistance - Requirement of knowledge - Categories of knowledge and effect of consent - Whether dishonesty by third party an element of knowing assistance - Whether third party had knowledge of essential facts constituting breach of trust - *Farah Constructions Pty Ltd v Say-Dee Pty Ltd* (2007) 230 CLR 89 applied.

EQUITY - Accessorial liability - Knowing assistance - Requirement of assistance - Where beneficiary alleged active involvement by third party - Whether third party assisted in dishonest and fraudulent design - Whether third party's conduct facilitated breach of trust - Where no evidence of active involvement - Appeal dismissed.

***Harstedt P/L (ACN 078 656 630) v Tomanek, Marijan***

Santamaria, McLeish, and Niall JJA

[\[2018\] VSCA 84](#)

10/04/2018

## Commercial Court

CORPORATIONS - Administrators appointed to a group of companies - Companies insolvent - Two of the companies were carrying on business as a partnership - Another company acted as an agent in trading on behalf of the partnership - Administrators seeking directions in order to be able to more properly advise the second meeting of creditors of the corporations - Whether the agent company held assets on trust for the partnership - Whether agent held a possessory lien over the assets it held on behalf of the partnership by reason of its right of indemnity against the partnership for debts incurred on behalf of the partnership - Whether lien had been lost by reason of the administrators of the agent corporation selling stock held by the agent on behalf of the partnership.

AGENCY - Existence of agency relationship - Agent's right of indemnity - Nature of agent's lien - Whether lien exists over assets of agent company - Effect of sale of assets by the administrators on lien - Whether the possessory lien of the agent extends to a bank account held on trust for the partnership.

***Carrafa, Michael; Gountzos, Peter and Cauchi, Richard in their capacity as joint and several administrators of Victoria Station Corporation P/L (in its own capacity as the partnership manager of the "Victoria Station Corporation Partnership" (trading as "Victoria Station", "Kate Hill", and "Victoria Station Clearance") (admins apptd) & Ors v Department of Employment***

Robson J

[\[2018\] VSC 163](#)

11/04/2018

PRACTICE AND PROCEDURE - VCAT - Whether application for leave to appeal decision of VCAT may succeed where appeal is doomed to fail - Relevance of applicant's intention to revisit recent intermediate appellate authority - Powers of Court of Appeal upon appeal from decision to refuse leave - *Myers v Medical Practitioners Board (Vic)* (2007) 18 VR 48 - *Commissioner of State Revenue v Frost* (2011) 83 ATR 832 - Victorian Civil and Administrative Tribunal Act 1997, s148.

TAXATION AND REVENUE - Whether right to object to assessment to tax affects appellate procedure - *Commissioner of Stamps (SA) v Telegraph Investment Co Pty Ltd* (1995) 184 CLR 453 - *McAndrew v Federal Commissioner of Taxation* (1956) 98 CLR 263 - Taxation Administration Act 1997, s96.

TAXATION AND REVENUE - Land tax - Definition of "greater Melbourne" - *Commissioner of State Revenue v EHL Burgess Properties Pty Ltd* (2015) 209 LGERA 314 - Land Tax Act 2005, s64, s65.

***Australian Investment & Development P/L v Commissioner of State Revenue***

Croft J

[\[2018\] VSC 154](#)

13/04/2018

## Common Law Division

COSTS - Application for gross sum costs order - Whether Court should 'otherwise order' to award costs on gross sum basis - Supreme Court (General Civil Procedure) Rules 2015 (Vic) r63.07.

COSTS - Whether fees should be allowed according to scale or costs agreement - Whether costs agreement with solicitors void ab initio due to alleged failures to comply with disclosure obligations - Whether defendant entitled to rely on alleged failures - Legal Profession Act 2004 (Vic), Legal Profession Uniform Law Application Act 2014 (Vic).

***Wilson, Rebel Melanie Elizabeth v Bauer Media P/L & Anor***

John Dixon J

[\[2018\] VSC 161](#)

12/04/2018

COSTS - Executor of estate commenced an administration proceeding against defendant by his litigation guardian - Where person named as litigation guardian not appointed and did not consent to be defendant's litigation guardian - Where it was reasonable for executor to accept that litigation guardian continued as defendant's litigation guardian after settlement of the probate proceeding in which he was litigation guardian - Where defendant's former litigation guardian seeks costs on an indemnity basis be paid by plaintiff - Application dismissed.

***In the matter of the estate of Lapan, Nila, deceased and In the matter of an application pursuant to Order 53 of the Supreme Court (General Civil Procedure) Rules 2015 for recovery of land and In the matter of an application pursuant to rule 54.02 of the Supreme Court (General Civil Procedure) Rules 2015 for directions in relation to the administration of the estate. McMurray, Lucy (Ludmila) (as executor of the estate of the late Nila Lapan, deceased) v Lapan, Stefan (No 3)***

McMillan J

[\[2018\] VSC 173](#)

12/04/2018

PLANNING AND ENVIRONMENT - Interpretation of restrictive covenant - Defendant admitted breach of restrictive covenant - Appropriate remedy for admitted breach.

REMEDIES - Injunction - Breach of restrictive covenant - Mandatory injunction - Whether plaintiff's conduct disentitles him to relief sought - Whether Lord Cairns Act damages should be awarded - Application of the 'good working rule' from *Shelfer v City of London Electric Lighting Co* [1895] 1 Ch 287 - Whether mandatory injunction would be oppressive to defendant - *LJP Investments Pty Ltd v Howard Chia Investments Pty Ltd* (1989) 24 NSWLR 490, *Break Fast* (2007) 20 VR 311 considered.

***Manderson, Warwick Alexander v Wright, Vicki Louise (No 2)***

John Dixon J

[\[2018\] VSC 162](#)

12/04/2018

PRACTICE AND PROCEDURE - Adjudgment - Multiple proceedings - Litigation of matters to be determined in earlier proceeding - Administration of justice - Efficient management of disputes.

PRACTICE AND PROCEDURE - Stay - Abuse of process - Multiple proceedings - Whether issues raised in new proceeding substantially the same as those determined in earlier proceeding - Supreme Court (General Civil Procedure) Rules 2015 r23.01 - Civil Procedure Act 2010 s7-9.

***TPSC P/L v Kingston City Council; Bonleaf P/L and Roads Corporation; TPSC P/L v Bonleaf P/L***

Quigley J

[\[2018\] VSC 160](#)

06/04/2018

PRACTICE AND PROCEDURE - Application to strike out defences under r24.02 of the Supreme Court (General Civil Procedure) Rules 2015 and the inherent jurisdiction of the Court - Applicable principles - Whether grounds for striking out - Whether prejudice to the plaintiff - Not an appropriate case for striking out defences - British American Tobacco Ltd v Cowell (2002) 7 VR 524; Hodgson v Amcor (2011) 32 VR 495; Lenijamar Pty Ltd v AGC (Advances) Ltd (1990) 27 FCR 388 referred to and followed.

***Jia, Ting Ting v Lee, Anthony Kuan-Hsien (aka Anthony Lee); Fair Financial P/L (ACN 148 824 711); Fair Group Global P/L (ACN 151 944 571); Okada, Lina; Sentry Financial Services P/L (ACN 113 531 034); Choo, Kah Chan and Zhang, Peng***

Derham AsJ

[\[2018\] VSC 164](#)

12/04/2018

PRACTICE AND PROCEDURE - Notices to produce - Whether too wide and fishing - Whether any legitimate forensic purpose - Too wide and fishing and no legitimate forensic purpose - Notices to produce set aside - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r35.08; Environment Protection Authority v Caltex Refining Co Pty Ltd (1993) 178 CLR 477; Jefferson Ford Pty Ltd v Ford Motor Co of Aust Pty Ltd [2007] VSC 450; Crown Joinery Pty Ltd v Lyleho Pty Ltd [2007] VSC 214, Shaw v Yarranova Pty Ltd [2011] VSCA 55; Woolworths Ltd v Svajcer [2013] VSCA 270; Webb v Wheatley [2015] VSC 153; ACN 096 450 770 (formerly AJH Lawyers Pty Ltd) v Mathieson Nominees [2017] VSC 559.

***1045 Burke Rd P/L (ACN 146 342 789) v Bosi, Yehiel. And Between: 1045 Burke Rd P/L (ACN 146 342 789) v Bousi, Ronen***

Derham AsJ

[\[2018\] VSC 157](#)

10/04/2018

PRACTICE AND PROCEDURE - Production and inspection - Subpoena - Related proceedings - Court of Appeal proceedings - Harman undertaking.

***Moodie, David John v Perna, Sal (Ruling No 1)***

Quigley J

[\[2018\] VSC 158](#)

04/04/2018

STATUTORY INTERPRETATION - Accrued rights - Whether plaintiff accrued right to bring application under repealed provision of Coroners Act 1985 - Whether contrary intention expressly appears - No accrued right to bring application - Contrary intention appears - Coroners Act 1985 s59 - Coroners Act 2008 s123(2), sch 1 - Interpretation of Legislation Act 1984 s14(2).

***James, Mark v Mason, K G (in his capacity as State Coroner)***

Niall JA

[\[2018\] VSC 170](#)

13/04/2018

STATUTORY INTERPRETATION - Accrued rights - Whether plaintiff accrued right to bring application under repealed provision of Coroners Act 1985 - Whether contrary intention expressly appears - No accrued right to bring application - Contrary intention appears - Coroners Act 1985 s59 - Coroners Act 2008 s123(2), sch 1 - Interpretation of Legislation Act 1984 s14(2).

***Spear, Fay v Hallenstein, Harold (in his capacity as the State Coroner); Hill, Robert; Saunders, Glenn; Butts, Peter; Coburn, John; Forti, Jeffrey; Smith, Donald; Grimshaw, Rodney and Ferguson, Christopher***

Niall JA

[\[2018\] VSC 169](#)

13/04/2018

## Criminal Division

CRIMINAL LAW - Application for bail - Applicant, aged 26, charged with thirteen offences, including trafficking (simpliciter) in methylamphetamine, possessing a firearm as prohibited person, resisting and assaulting police and dealing with proceeds of crime - Offences allegedly committed while on bail granted two months earlier on charges including trafficking in methylamphetamine and cocaine - Applicant also subject to community correction order - Significant criminal history, including for failing to appear - Applicant in custody for over two months - Major charges to be contested - Weaknesses in prosecution case on some charges - Likely delay in contested hearing in Magistrates' Court - Medical operations for deviated septum scheduled next week - Residential rehabilitation (for at least two months) available - Surety of \$5,000 offered - Whether applicant has "shown cause why his detention in custody is not justified" - Whether applicant, if bailed, presents unacceptable risk of further offending or failing to appear - Bail granted upon a surety of \$5,000 and with residential, daily reporting, curfew and other conditions - Bail Act 1977 (Vic), s4.

***Lebdeh, Bilal and Gaffney, Detective Senior Constable Anthony***

Croucher J

[\[2018\] VSC 127](#)

22/03/2018

CRIMINAL LAW - Application for bail - Charges relating to family violence and home invasion - Offence involving use of an offensive weapon - Contravention of a family violence intervention order - Show cause position - Whether conditions ameliorate unacceptable risk - Bail granted with conditions - Bail Act 1977.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Kele, Paulo***

Champion J

[\[2018\] VSC 159](#)

10/04/2018

CRIMINAL LAW - Application for bail - Children's Court - Offences involving robbery and obtaining property by deception - Whether applicant poses an unacceptable risk - Bail granted with conditions - Bail Act 1977.

***In the matter of the Bail Act 1977 and In the matter of an Application for Bail by Z S***

Champion J

[\[2018\] VSC 153](#)

06/04/2018

# 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.

COMMON LAW - Customs - Offences - Smuggling - Importation of tobacco - Evasion of duty - False statement - Multiple offences with common elements - Conviction - No appearance by defendant - Deterrence - Totality - Repeat offender - Minimum penalties.

***Comptroller-General of Customs v Amini***

[\[2018\] VCC 327](#)

Judge Davis

23/03/2018

CONTRACT - Breach of contract - Consultancy agreement for fixed term of three years - Whether termination wrongful - Period of notice required - Entitlement to claim debt in lieu of notice - Alternatively, whether damages recoverable for loss of opportunity to renew agreement or enter into a new agreement.

***Sportzcom Australia Pty Ltd v Ekeru Dental Pty Ltd***

[\[2018\] VCC 398](#)

Judge A Ryan

10/04/2018

CONTRACT - Terms - Construction - Implied terms - Implied duty to co-operate.  
TRADE PRACTICES - Misleading and deceptive conduct - Measure of damages - Loss of opportunity to renegotiate terms of agreement.

ESTOPPEL - Promissory estoppel - Estoppel by waiver.

PRACTICE AND PROCEDURE - Departure from pleadings.

***Kalibrate Asset Management Solutions Pty Ltd v IBM Australia Limited***

[\[2018\] VCC 332](#)

Judge Cosgrave

23/03/2018

PRACTICE AND PROCEDURE - Appeal - Appeal brought pursuant to the Family Violence Protection Act 2008 out of time - Whether this Court has jurisdiction to hear appeal brought outside the statutory time limit - Court has no jurisdiction to consider appeal - Summers (A Pseudonym) v McKenzie (A Pseudonym) [2015] VCC 2015, applied - Family Violence Protection Act 2008 ss. 114, 115, 116, 117, 119, 120, 121; Magistrates Court Act 1989 s. 109.

***Sky (a pseudonym) v Sky (a pseudonym)***

[\[2018\] VCC 417](#)

Judge Murphy

21/03/2018

# 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 Magistrate. If you would like your judgment added to the Library Bulletin, please email the reference librarian in your jurisdiction.

WORKERS COMPENSATION - Application for revocation of conciliator officer's direction - Hearing de novo - "genuine dispute" - Effect of resolution of dispute at earlier conciliation - Accident Compensation Act 1985 ss 99 - Workplace Injury Rehabilitation and Compensation Act 2013 ss 296(2)(d) &(3), 297(9) &(10), 299(2), 313(4).

***Amcor v Whelan***

[2018] VMC 03

Magistrate B.R Wright

27/03/2018



# Articles

Listed below are articles indexed by the Library from journals added to our collections over the past 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.

## Arbitration

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International commercial dispute - Hague Convention on Choice of Court Agreements - Draft Hague Convention on Recognition and Enforcement of Foreign Judgments - International Commercial Court - Western Australia - Australia

**Chief Justice Martin.** "An Australian approach to international commercial arbitration." (2018) 45(2) Brief 24-27

## Computer Law

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Computer gaming - Electronic gaming - Competitive video gaming - Technology - Intellectual property - Governance - Corruption - Sponsorship - Player welfare - Match-fixing - Betting - Social media - Legal challenges - Australia

**Lebbon, M.** "The rise of esports." (2018) 92(4) LIJ 34-37.

## Contract Law

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Sports law - Contractual language - Drafting - Commercial contract - Interpretation - Contractual clarity - Western Australian Rugby Union v Australian Rugby Union Ltd (Western Force) - NSW

**Paterson, J. and R. MacDonald.** "Rugby scrum." (2018) 92(4) LIJ 38-40.

## Criminal Law & Procedure

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Digital evidence - Digital material - Social media disclosure - Digital disclosure - Instant messaging - WhatsApp - Digital messaging platforms - Digital data - Photo sharing - Mobile phones - Smart phones - Delays - Rape trials - Sexual offences - Technology - Police procedures - Criminal Procedure and Investigations Act 1996 (UK) - Public interest - UK

**Hearnden, R.** "Disclosure in criminal cases: it's not rocket science." [2018] (Mar) Counsel 32-33.

## Legal Profession

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Bullying - Courtroom - Judges - Barristers - Judicial conduct - Judicial behaviour - Harassment - Language used - Duty of care - Remedies - Judicial Conduct Investigations Office - In the matter of A (Children) - UK

**Trustman, J.** "Who judges the judges?" [2018] (Mar) Counsel 25-26.

Judges - Judicial conduct - Judicial behaviour - Trial mismanagement - Judicial mismanagement - Judicial complaints investigation - Courtroom - Bullying - Harassment - Ethics - Social media - Judicial Conduct Investigations Office - UK

**Delahunty, J.** "Judicial conduct: when it goes wrong." [2018] (Mar) Counsel 22-24.

## Practice & Procedure

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Right of Appeal - Costs - Fees waiver - Public interest litigation - Interests of justice test - Public benefit - Supreme Court of Appeal - *Carolan v AMF Bowling Pty Ltd t/as Bennetts Green Bowl* - *Leveridge v Kennedy* - NZ  
**McGuire, J.** "The challenges of an appellate audience." [2018] (March) NZLJ 61-63.

## Property Law

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Land use - Recreational activities - Recreational sport - Sport groups - Sports clubs - Sports facilities - Leisure activities - Planning approvals - Private land zones - Public land zones - Public land manager - Crown land - Compliance - Australia  
**Kelleher, L. and H. Algie.** "A sporting chance: pitfalls for sports facilities." (2018) 92(4) LIJ 26-29.

## Taxation

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Professional sportspeople - Athlete - Image rights - Image rights individual - Image rights income - Intellectual property - Implications - Income Tax Assessment Act 1997 (Cth), part 2-42 - Australia  
**Hinoporos, F. and R. D'Cruz.** "Treatment and taxation of an athlete's image rights." (2018) 92(4) LIJ 30-33.

## Torts

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Personal injury - Sport - Professional sport - Contact sport - Damages - Negligence - Duty of care - Sport-related concussion - Brain injury - Australian Football League - Australian Rugby League - Litigation - Class action - *McManus v Knights Rugby League* - *Roe v Minister of Health* - Australia  
**Greenhow, A.** "A knock to the head: sport-related concussion issues are likely to be deliberated in Australian courts in the next 12 months." (2018) 92(4) LIJ 22-25.

## 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](mailto:llv@courts.vic.gov.au)

Visit our website for upcoming events [lawlibrary.vic.gov.au](http://lawlibrary.vic.gov.au)



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

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- We collate and curate the best range of legal information resources for our constituents.
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