



THE LAW LIBRARY OF VICTORIA

Library
Bulletin
27 April 2018

Library News

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](#).

The Law Library of Victoria is holding a number of events during Law Week 2018. More information about these and other events presented by the Law Library of Victoria can be found on our website, at www.lawlibrary.vic.gov.au/services/events

Monday 14 May - 1:15pm-1:40pm

Switch on... Locating Victorian Unreported Judgments

Wednesday 16 May & Friday 18 May - 1:15pm - 1:45pm

Tour of the Supreme Court Library

Thursday 17 May - 1:15pm - 2:00pm

Lyrical Lunchtimes

Saturday 19 May - 10am - 3pm

Court Open Day

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).

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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/.

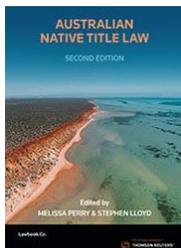
Judicial officers and court staff can borrow any of the books listed. Contact your jurisdictional librarian to request an item.

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



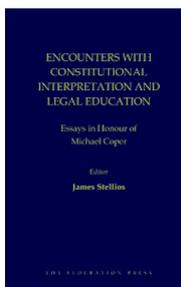
Hutchinson, Terry, *Researching and writing in law*
4th ed., Lawbook Co., Pyrmont, 2018
Call number: Ref 340.072 HUT.4 (Supreme Court Library)

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



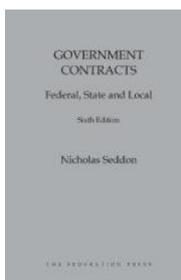
Perry, Melissa, Lloyd, Stephen (ed.), *Australian native title law*
2nd ed., Lawbook Co., Pyrmont, 2018
Call number: 346.0432 PER.2 (Supreme Court Library)

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



Stellios, James (ed.), *Encounters with constitutional interpretation and legal education: essays in honour of Michael Coper*
The Federation Press, Annandale, 2018
Call number: 342.94 ENC (County Court Library)

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



Seddon, Nicholas, *Government contracts: federal, state and local*
6th ed., The Federation Press, Leichhardt, 2018
Call number: 346.023 SED.6 (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

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

Proclamations

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

- *Justice Legislation Amendment (Body-worn Cameras and Other Matters) Act 2017* No. 54/2017
 - Sections 3-7 of this Act came into operation on 18 April 2018 (SG178 17.4.2018)
- *Children Legislation Amendment (Information Sharing) Act 2018* No. 11/2018
 - Sections 1-3, 41-43, 46, 47 of this Act came into operation 11 April 2018 (SG164 10.4.2018)

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

- *Domestic Animals Amendment (Puppy Farms and Pet Shops) Act 2017* No. 69/2017
 - Sections 4-21, 23-33, 37-66(1), 67-76(2), 77-84(1), 85-91(1), 92-99, 114 of this Act came in by forced commencement on 10 April 2018 s.2(8)



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

High Court Cases

CONSTITUTIONAL LAW (CTH) - Chapter III - Where complaints made under Anti-Discrimination Act 1977 (NSW) came before Civil and Administrative Tribunal of New South Wales ("NCAT") - Where parties to disputes residents of different States - Where common ground that NCAT exercised State judicial power in hearing and determining disputes - Where common ground that NCAT not a "court of a State" - Whether Ch III of Constitution contains implication preventing any party to federal compact from conferring adjudicative authority in respect of matters listed in ss 75 and 76 of Constitution on organ of government, federal or State, other than a court referred to in Ch III.

CONSTITUTIONAL LAW (CTH) - Inconsistency between Commonwealth and State laws - Where Civil and Administrative Tribunal Act 2013 (NSW) purports to confer jurisdiction on NCAT to determine disputes between residents of different States - Whether State law alters, impairs or detracts from operation of Judiciary Act 1903 (Cth), s 39(2).

WORDS AND PHRASES - "adjudicative authority", "administrative tribunal", "alter, impair or detract", "belongs to or is invested in", "constitutional implication", "court", "court of a State", "diversity jurisdiction", "federal Judicature", "federal jurisdiction", "inconsistency", "integrated national court system", "judicial power", "jurisdiction", "matter", "negative implication", "residents of different States", "State jurisdiction".

Burns, Garry v Corbett, Tess & Ors; Burns, Garry v Gaynor, Bernard & Ors; Attorney General for New South Wales v Burns, Garry & Ors and Attorney General for New South Wales v Burns, Garry & Ors

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

18/04/2018

MIGRATION - Pt 2 Div 3 subdiv AB of Migration Act 1958 (Cth) - Where plaintiff applied for protection visa - Where plaintiff claimed real chance of harm due to being Christian - Where plaintiff claimed to attend church regularly - Where delegate of Minister for Immigration and Border Protection called reverend of church and reverend provided information on plaintiff's attendance at church - Where delegate did not provide plaintiff with information provided by reverend or invite plaintiff to comment on it - Where delegate refused to grant protection visa to plaintiff - Whether delegate failed to comply with s 57(2) of Migration Act.

MIGRATION - Pt 7AA of Migration Act 1958 (Cth) - Where plaintiff "fast track review applicant" within meaning of Migration Act - Whether decision affected by jurisdictional error because of failure to comply with s 57(2) a "fast track reviewable decision" within meaning of Pt 7AA - Where "new information" defined as documents or information not before Minister when deciding to refuse to grant protection visa that Immigration Assessment Authority considers may be relevant - Power of Authority to get new information - Power of Authority to consider new information - Obligation of Authority to invite applicant to comment on new information - Nature of review by Authority - Whether Authority's decision not to interview plaintiff and certain other persons or to have regard to certain information provided by plaintiff legally unreasonable.

WORDS AND PHRASES - "condition of valid performance", "decision", "decision that is made in fact", "de novo consideration of the merits", "exceptional circumstances", "fast track reviewable decision", "jurisdictional error", "legally effective decision", "legally unreasonable", "new information", "not a valid decision", "not previously known", "personal information", "relevant information", "review material", "unreasonable failure to exercise power", "would be the reason, or part of the reason for refusing to grant a visa".

Plaintiff M174/2016 v Minister for Immigration and Border Protection & Anor

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

18/04/2018

Victorian Supreme Court Cases

Court of Appeal

APPEAL - Question of law - Disciplinary proceedings - Architects - Architects Registration Board - Dispute between architect and client - Board alleged unprofessional conduct, carelessness and incompetence - Tribunal established by Board - Allegations upheld - Review by VCAT - Allegations upheld in part - Appeal on question of law - Appeal allowed in part - Victorian Civil and Administrative Tribunal Act 1998, s 148 - Architects Act 1991. ADMINISTRATIVE LAW - Appeal on question of law - Whether originating process identified questions of law - Procedural fairness - Whether applicant informed of case against him - Whether allegations alternative or cumulative - Appeal allowed in part - Fraser v Sperling [2017] VSCA 53 - Victorian Civil and Administrative Tribunal Act 1998, s 148 - Supreme Court (Miscellaneous Civil Proceedings) Rules 2008, r 4.11(1)(b).

WORDS AND PHRASES - 'Careless or incompetent' - Whether compendious expression - Architects Act 1991, s 32.

McSteen, Christopher v Architects Registration Board of Victoria

Maxwell P, Priest, and McLeish JJA

[\[2018\] VSCA 96](#)

19/04/2018

CONTRACT - Contract for sale of land - Specific performance - Whether purchaser ready, willing and able to perform its obligations - Best endeavours obligation to expedite and procure the registration of subdivision - Obligation to pay fees to referral authorities clarified as imposed on purchaser, not vendors, by earlier decision of the Court of Appeal - Failure by purchaser to pay fees to referral authorities, or deduct amount from final settlement, before decision of the Court of Appeal - Purchaser made relevant payments after decision of Court of Appeal - No obligation in circumstances to entertain alternative interpretation of contractual obligations - Relevance to delay of vendors' misleading conduct that they could obtain finance - Bishop v Taylor (1968) 118 CLR 518, DTR Nominees Pty Ltd v Mona Homes Pty Ltd (1978) 138 CLR 423, Joseph Street Pty Ltd v Tan (2012) 38 VR 241 applied - Appeal dismissed.

PROPERTY - Whether judge erred in granting the purchaser access to the land - Whether proposed development must be identified in the contract of sale - Sale of Land Act 1962 s 9AD(3).

COSTS - Whether judge erred in not attaching a security for costs condition on grant of specific performance - Whether judge erred in awarding costs on an indemnity basis - Effect of late production during trial of alternative contract inconsistent with the vendors' obligations under contract of sale - Effect of vendors' misleading conduct - Oshlack v Richmond River Council (1998) 193 CLR 72 applied.

Bisognin, Gino Andrew and Bisognin, Leah Joan v Hera Project P/L (ACN 163 685 041)

Tate, Kyrou, and Coghlan JJA

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

17/04/2018

CORPORATIONS - Civil penalty proceedings - Alleged breaches of ss 180 and 181 of the Corporations Act 2001 (Cth) - AWB Limited (AWB) supplied hard currencies to Iraq contrary to UN Resolutions - Payments made to Iraq (a) via sham 'inland transport fees', (b) as compensation for purportedly contaminated wheat and (c) by way of inflated wheat price to pay debt owing to third party - AWB recovered payments from UN Escrow Account ostensibly by reason of having supplied 'humanitarian goods' to Iraq - Whether Geary, as an officer of AWB, knew, or ought to have known, of the improper conduct - Whether Geary breached statutory duties by failing to inquire into and prevent conduct by AWB - Whether a prevailing view existed within AWB that payments had been approved by UN and Department of Foreign Affairs and Trade - Whether Geary reasonably believed that payments had been so approved - Whether Geary knew that public revelation of wrongdoing likely to cause substantial and enduring harm to AWB - Challenge to findings of fact - No material error established.

EVIDENCE - Application of *Jones v Dunkel* in civil penalty proceedings - Whether trial judge erred in failing to invoke *Jones v Dunkel* regarding specific documents - No error established.

PRACTICE AND PROCEDURE - Appellate review of findings of fact made at first instance - 'Real review' of evidence led at trial - Application of *Robinson Helicopter Company Inc v McDermott* (2016) 331 ALR 550 to drawing of inferences from findings of fact.

Australian Securities and Investments Commission v Geary, Peter Anthony

Ferguson CJ, Weinberg JA, and Sifris AJA

[\[2018\] VSCA 103](#)

23/04/2018

COSTS - Application to Trial Division pursuant to s 148 of the Victorian Civil and Administrative Tribunal Act 1998 - Where primary judge dismissed application - Where successful respondent applied for costs - Where primary judge refused application and ordered that each party bear its own costs and that successful respondent pay applicant's costs of successful application for security for costs - Whether primary judge erred in refusing to award costs to successful respondent - Cross-appeal allowed - Costs fixed.

Stanley Rural Community Inc v Stanley Pastoral P/L (ACN 163 142 363); Stanley Pastoral P/L (ACN 163 142 363) v Stanley Rural Community Inc (No 2)

Osborn, Santamaria, and Ashley JJA

[\[2018\] VSCA 104](#)

23/04/2018

CRIMINAL LAW - Appeal - Conviction - Appellant convicted of 38 charges of theft - Prosecution alleged joint criminal enterprise involving appellant and co-accused - Judge directed jury necessary to find common verdict for Appellant and co-accused - Whether direction erroneous - Whether substantial miscarriage of justice - No substantial miscarriage of justice - Appeal dismissed - Criminal Procedure Act 2009 s 276(1)(b).

Dailakis, Evangelos v The Queen

Kaye, Niall, and Hargrave JJA

[\[2018\] VSCA 101](#)

24/04/2018

CRIMINAL LAW - Appeal - Conviction - Applicant charged with importing a commercial quantity of a border controlled precursor (pseudoephedrine) - Whether evidence of prior uncharged importation admissible - Evidence relevant to applicant's state of mind and to rebut defence that he accepted package for work colleague - *Ivanoff v The Queen* [2015] VSCA 116.

Lin, Wenbiao v The Queen

Weinberg, Santamaria, and Kyrou JJA

[\[2018\] VSCA 100](#)

20/04/2018

CRIMINAL LAW - Appeal - Conviction - Attempt to possess commercial quantity of methylamphetamine - Admissibility of evidence - Whether judge erred in characterising the evidence as *res gestae* - Whether evidence admissible as original transactional evidence - Whether evidence could be used for hearsay purpose - Leave to appeal granted - Appeal dismissed - Evidence Act 2008 ss 60, 65, 136, 137.

CRIMINAL LAW - Appeal - Sentence - Attempt to possess commercial quantity of methylamphetamine - Traffick in commercial quantity of methylamphetamine - Total effective sentence of 18 years' imprisonment - Non-parole period of 14 years - Whether offender wrongly categorised as a 'principal' - Whether offender wrongly sentenced on basis of offence of importation - Whether manifestly excessive - Leave to appeal granted - Appeal dismissed.

Schanker, Rayan Jaden v The Queen

Tate, McLeish JJA, and Kidd AJA

[\[2018\] VSCA 94](#)

18/04/2018

CRIMINAL LAW - Appeal - Sentence - Aggravated burglary - Night-time home invasion with victims known to be present - Where offending did not involve weapons - Whether offending properly or usefully characterised as 'confrontational aggravated burglary' - Whether sentence manifestly excessive - Appeal dismissed - *Hogarth v The Queen* (2012) 37 VR 658; *DPP v Meyers* (2014) 44 VR 486 considered.

Maslen, Benn v The Queen

Priest and McLeish JJA

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

13/04/2018

CRIMINAL LAW - Appeal - Sentence - Pleas of guilty to two charges of attempted armed robbery and consequential breach of Community Correction Order ('CCO') - CCO cancelled and applicant re-sentenced for previous theft of motor vehicle pursuant to Sentencing Act 1991 s 83AS(1)(c) - Whether new sentence of six months' imprisonment for theft of motor vehicle manifestly excessive - Whether total effective sentence of two years and nine months with non-parole period of 18 months manifestly excessive - Principle of totality - Youthful offender with disadvantaged background and mild intellectual disability - Application for leave to appeal dismissed.

Bieljok, Kuachjan v The Queen

Weinberg, Beach, and Hargrave JJA

[\[2018\] VSCA 99](#)

20/04/2018

CRIMINAL LAW - Appeal - Sentence - Possessing unregistered handguns and drugs of dependence - Prosecution concession on plea that community correction order within range - Aggregate sentence of six months' imprisonment - Whether manifestly excessive - Appeal dismissed.

Bosa, Mark Bruno v The Queen

Priest and Beach JJA

[\[2018\] VSCA 97](#)

19/04/2018

CRIMINAL LAW - Sentence - Appeal - Multiple offences - Applicant sentenced to imprisonment for 1 year and 18 month community correction order - Contravention of community correction order - Community correction order cancelled - Applicant sentence to 6 months' imprisonment for contravention of CCO - Upon cancellation of CCO, applicant sentenced to total effective sentence of 3 years with non-parole period of 2 years - Applicant already served 1 year term of imprisonment - Sentence for contravention of CCO in excess of maximum term of imprisonment - Crown concessions that sentence breached totality principle and manifestly excessive - Appeal allowed - Original term of imprisonment set aside - Applicant resentenced - Time in custody under original sentence declared as pre-sentence detention - Sentencing Act 1991, ss 11, 18, 83AD and 83AS.

Luu, Minh v The Queen

Ferguson CJ, Osborn, and Beach JJA

[\[2018\] VSCA 92](#)

16/04/2018

CRIMINAL LAW - Sentence - Appeal - Three charges of rape and charges of aggravated burglary, threat to kill, sexual assault and theft - Sentenced to 10 years' imprisonment with non-parole period of 6 years and 6 months - Whether sentence manifestly excessive - Whether orders for cumulation excessive - Whether error in orders for cumulation in respect of two charges - Whether family support given too little weight - Leave to appeal refused.

Cao, Tuan Anh v The Queen

Maxwell P, Tate, and Niall JJA

[\[2018\] VSCA 98](#)

09/04/2018

SALE OF LAND - Estate agents - Regulated estate agent authority - Estate Agents Act 1980, s 49A disclosure requirements - Where agent barred from commission and liable to penalty if authority noncompliant - Authority required by s 49A(4)(c) to state that agent not entitled to retain any rebate or to charge for expenses above their cost - Whether statement required if authority states agent will not be entitled to receive any rebate and provides for no expenses to be charged by agent - Purpose of provision to protect consumers before entering agreement - Estate Agents Act 1980, ss 4, 48A, 48B, 49A, 50.

Advisory Services P/L (trading as Ray White St Albans) (ABN 63 053 790 971) v Augustin, Stella (by her litigation guardian Michael Baczyk) and Augustin, Caroline

Santamaria, McLeish, and Niall JJA

[\[2018\] VSCA 95](#)

19/04/2018

STATUTORY INTERPRETATION - Appeal - Appeal from decision of Associate Judge on question of law - Whether the summary offence created by s 72(2) of the Long Service Leave Act 1992 of failing to pay the full amount of long service leave owing to an employee on the day employment ended is a continuing or complete offence - Plain meaning of text of provision does not create continuing offence - Appeal allowed - *Jones v Lorne Saw Mills Pty Ltd* [1923] VLR 58; *R v Industrial Appeals Court*; *Ex parte Barelli's Bakeries Pty Ltd* [1965] VR 615; *R v Industrial Appeals Court*; *Ex parte Circle Realty Pty Ltd* [1980] VR 459; *Sloggett v Adams* (1953) 70 WN (NSW) 206.

Joseph, David v Worthington, Jayne & Anor

Tate, Osborn, and Niall JJA

[\[2018\] VSCA 102](#)

23/04/2018

Commercial Court

CONTRACT - Property Development Agreement - Specific enforcement - Agreement involved landowners making available land for development by the developer - The Agreement provided Lots 1, 2 and 3 of the landowners' land to be included in the property development - Landowner refuses to carry out the obligations under the agreement - The developer seeks specific performance.

CONTRACT - Property Development Agreement - Rectification for unilateral mistake - Landowner claims that Lot 1 was not to be included in the contract - Landowner seeks to have the Agreement rectified - Consideration of 'special circumstance'.

GUARANTEE - The landowner under the Property Development Agreement is a company - Its two directors guaranteed the obligations of the landowner - One of the directors seeks to have the guarantee set aside on equitable grounds.

DAMAGES CLAIM - Negligence - Breach of retainer - Breach of duty of care - Wrongs Act 1958 - The landowner seeks damages against its solicitors and accountant, in the event the contract is not rectified, for failing to ensure that Lot 1 was not included in the development.

DFG Services P/L & Ors v Premier Bay P/L & Ors; Premier Bay P/L & Ors v DFG Services P/L & Ors; Montalto, Mauro v DFG Services P/L & Ors

Robson J

[\[2018\] VSC 168](#)

13/04/2018

CORPORATIONS - Application for leave to bring proceeding in name of company under s 237 of the Corporations Act 2001 (Cth) - Where company no longer trading, shareholders deadlocked, and engaged in competing businesses - Winding up inevitable - Application refused where applicant failed to demonstrate good faith - Also failure to demonstrate that leave in the best interests of company.

CORPORATIONS - Application to wind up company - Order made under s 461(1)(c) (suspension of business) and/or s 461(1)(k) (just and equitable).

Hadjiantonakis, Daniel v Innovateq P/L (ACN 132 372 242); Barnes, Ross v Innovateq P/L (ACN 132 372 242)

Kennedy J

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

24/04/2018

CORPORATIONS - Application to set aside Deed of Company Arrangement (DOCA) - Whether DOCA contrary to the interests of creditors as a whole - Whether DOCA should be terminated for some other reason - Public interest and commercial morality considerations - Whether discretion should be exercised to terminate DOCA - Section 445D(1)(f) and (g) Corporations Act 2001 (Cth).

In the matter of the Syndicate Forty Four P/L (formerly known as the Syndicate Two P/L) (subject to deed of company arrangement) (ACN 126 943 048) & Ors. Eco Heat (Vic) P/L (ACN: 108 686 040) v The Syndicate Forty Four P/L (formerly known as The Syndicate Two P/L) (subject to deed of company arrangement) (ACN 126 943 048) and others according to the attached schedule.

Sifris J

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

13/04/2018

EVIDENCE - Legal professional privilege - Whether privilege attaching to copy documents is qualified in judicial proceedings when original unprivileged documents unavailable to party seeking production - Whether emails in an antecedent chain incorporated in a host email for the dominant purpose of seeking or providing legal advice are privileged copies - Whether modifying a document for the dominant purpose of seeking or providing legal advice creates a privileged copy or new iteration - Commissioner of Australian Federal Police v Propend Finance Pty Ltd (1997) 188 CLR 501, applied - Kamasae v Commonwealth of Australia (No 2) (LPP Ruling) [2016] VSC 404, considered - Desane Properties Pty Limited v State of New South Wales [2018] NSWSC 173, considered - Evidence Act 2008, ss 118, 131A.

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

Macaulay J

[\[2018\] VSC 193](#)

24/04/2018

PRACTICE AND PROCEDURE - Notices to produce - Whether too wide and fishing - Whether any legitimate forensic purpose - Issuing the notices to produce was not an abuse of process - One category of documents set aside - Supreme Court (General Civil Procedure) Rules 2015 (Vic), r 35.08; Crown Joinery Pty Ltd v Lyleho Pty Ltd [2007] VSC 214; Volunteer Fire Brigades Victoria v CFA (Discovery Ruling) [2016] VSC 573; Sharpe v Grobbel [2017] NSWSC 1065; Knights Quest Pty Ltd v Barokes Pty Ltd (2016) 113 ACSR 505.

Urban, Peter v Junior Academy ELC P/L (ACN 136 704 697) (as trustee for the Glen Eira Road (249) Unit Trust (ABN 54 859 835 183)); Lahmy, Barcochva; Lahmy, Anna; Early Childhood Management P/L (ACN 161 123 459) and Gold Glow P/L (ACN 606 801 807)

Matthews JR

[\[2018\] VSC 192](#)

26/04/2018

PRACTICE AND PROCEDURE - Summary judgment - Whether defendant has real prospects of success on his defence - Civil Procedure Act 2010 (Vic), ss 61 and 63 - Lysaght Building Solutions Pty Ltd v Blanalko Pty Ltd (2013) 42 VR 27 - Daniel Simon Hausman and Lance Vincent Hodgkinson v Abigroup Contractors Pty Ltd (2009) 29 VR 213 - Application for summary judgment allowed.

Win Securities Ltd (ACN 007 346 223) and Webster Dolilta Finance Ltd (ACN 004 664 322) v Bower, Luke Thomas

Matthews JR

[\[2018\] VSC 180](#)

20/04/2018

Common Law Division

ADMINISTRATIVE LAW - Appeal on questions of law from decision of VCAT - Appeal successful on one ground - Rehearing by VCAT required - Whether rehearing should be before a differently constituted Tribunal - Directions for rehearing - Victorian Civil and Administrative Tribunal Act 1998 s 148(7) and (8).

PRACTICE AND PROCEDURE - Orders entered after judgment - Application to amend order - Slip rule - Inherent jurisdiction - Whether party had opportunity to be heard as to part of the order - Supreme Court (General Civil Procedure) Rules 2015 r 36.07.

Moreland City Council v Glenroy RSL Sub Branch Inc (No 2)

Ginnane J

[\[2018\] VSC 178](#)

19/04/2018

ADMINISTRATIVE LAW - Judicial Review - Originating motion - Application for extension of time in which to file originating motion for judicial review - Application refused by Associate Justice - Whether error in finding no special circumstances - No special circumstances - Whether error in finding no arguable case - No arguable case - Appeal dismissed - Supreme Court (General Civil Procedure) Rules 2015 rr 56.02, 77.06 - Road Safety Rules 2009 rr 207, 332.

A B v County Court of Victoria and Greater Shepparton City Council

Zammit J

[\[2018\] VSC 188](#)

26/04/2018

COSTS - Where plaintiff's application to remove executor of deceased's estate unsuccessful - Where application contrived and without a proper basis - Costs to follow the event - Indemnity costs ordered - No point of principle.

In the matter of the Estate of Wright, Rozalia, deceased. Molnar, Andreas v Butas, Zoltan (in his capacity as the Executor of the Estate of Wright, Rozalia, deceased) (No 4)

McMillan J

[\[2018\] VSC 165](#)

16/04/2018

CRIMES MENTAL IMPAIRMENT - Custodial supervision order - Application for further extended leave - Whether the safety of the applicant or members of the public will be seriously endangered as a result of a grant of further extended leave - Whether granting application would be consistent with principle that applicant's freedom and personal autonomy should be kept to minimum consistent with safety of community - Further extended leave granted with conditions - Crimes (Mental Impairment and Unfitness to be Tried) Act 1977 ss 57, 39 and 40.

In the matter of an application for further extended leave pursuant to section 57 of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 and In the matter of an application by L T B

Champion J

[\[2018\] VSC 179](#)

19/04/2018

CRIMINAL LAW - Application for judicial review - First respondent convicted and sentenced for unlawful assault by Magistrates' Court of Victoria - Appeal to County Court of Victoria not brought within 28 days - First respondent given inadequate legal advice but acted promptly after retaining specialist criminal lawyers - Judge of County Court of Victoria granted leave to appeal under s 263(2)(a) of the Criminal Procedure Act 2009 (Vic) - Whether erred in law in finding that exceptional circumstances were established and exercising discretion to grant leave to appeal - Whether took irrelevant or failed to take relevant considerations into account - Whether inadequate legal advice given to first respondent could be considered as part of explanation for delay - Whether judge took into account merits of proceeding in Magistrates' Court and prospects of appeal - 'exceptional circumstances' - Supreme Court (General Civil Procedure) Rules 2015 (Vic) O 56.

Director of Public Prosecutions [DPP] (on behalf of Adam Donnelly) v Archer, Glenn and County Court of Victoria

Bell J

[\[2018\] VSC 155](#)

06/04/2018

INJUNCTIONS - Application for freezing orders against defendant and non-parties - Application granted in part - Supreme Court (General Civil Procedure) Rules 2015, Order 37A.

Suzhou Haishun Investment Management Co Ltd v Zhao, Yue'e (No 2)

John Dixon J

[\[2018\] VSC 176](#)

18/04/2018

JUDICIAL REVIEW AND APPEALS - Appeal from Magistrates' Court on questions of law - Finding the Appellant solemnised a marriage he had reason to believe would be void - s 100 of the Marriage Act 1961 (Cth) (the Act) - Was the religious ceremony performed by the Appellant completed - Was the ceremony solemnised according to a form and ceremony recognised as sufficient for marriage by the Appellant's religious body - Section 45(1) of the Act - Did the Appellant intend to solemnise a marriage pursuant to the Act - Circumstantial case - Were there inferences consistent with innocence - Knight v R (1992) 175 CLR 495 - Jones v Dunkel (1959) 101 CLR 298.

Omerdic, Ibrahim v England, Jessica

Keogh J

[\[2018\] VSC 174](#)

13/04/2018

LIMITATION OF ACTIONS - Application by plaintiff for extension of time in respect of defamation claims - Application by defendants for summary dismissal of proceeding pursuant to ss 62 and 63 of the Civil Procedure Act 2010 (Vic) - Application by defendants to strike out statement of claim pursuant to Rule 23.02 of the Supreme Court (General Civil Procedure) Rules 2016 ('Rules') - Plaintiff and his family were longstanding Church members - Plaintiff's claims concerned twelve events in a series of disputes between plaintiff and Church leadership comprising the defendants - Plaintiff's defamation claims out of time - Whether unreasonable in the circumstances for plaintiff to commence an action within one year limitation period - Limitations of Actions Act 1958 ('LAA') s 23B(2) objective test does not preclude consideration of claimant's personal history and attributes - *Casley v ABC* (2013) 39 VR 526 applied - Extension of time granted but insufficient to save plaintiff's claims from being out of time - Plaintiff refused leave to proceed with defamation claim - Summary judgment granted for defendants insofar as plaintiff's claims relate to negligence and alleged breaches of the Telecommunications (Interception and Access) Act 1979 (Cth), Equal Opportunity Act 2010 (Vic) and the Racial and Religious Tolerance Act 2001 (Vic) - Church voluntary unincorporated association - Plaintiff have leave to file claims arising out of possible alleged breaches of contract.

Eshow, Sargon v Zaia, Bishop Mar Meelis; Toma, Reverend Korkis; Marbehnam, Reverend Hurmizd; Mikhail, Reverend Anatwan; Haweil, George and Patriarch Mar Gewargis III

Daly AsJ

[\[2018\] VSC 110](#)

18/03/2018

PRACTICE AND PROCEDURE - Application for temporary stay - Amalgamation of Maritime Union of Australia and Construction, Forestry, Mining and Energy Union - Maritime Union of Australia deregistered - Amalgamation decision subject to appeal in Fair Work Commission - Potential for amalgamation to be set aside and Maritime Union of Australia to be reinstated as defendant in proceeding - Stay of proceedings inconsistent with overarching purpose of Civil Procedure Act 2010 - Application refused - Fair Work (Registered Organisations) Act 2009 (Cth) ss 44, 73, 79 and 80 - Civil Procedure Act 2010 ss 7, 9 and 43.

Victoria International Container Terminal Ltd t/a VICT (ACN 164 915 655) v Construction, Forestry, Maritime, Mining and Energy Union

McDonald J

[\[2018\] VSC 181](#)

20/04/2018

PRACTICE AND PROCEDURE - Discovery - Application for preliminary discovery under rule 32.05 of Supreme Court (General Civil Procedure) Rules 2015 ('Rules') - Applicant owns and operates materials recycling facility and refuse transfer station pursuant to planning permit - Council amended planning scheme to rezone area, thereby prohibiting use of land for materials recycling facility and refuse transfer - Applicant submitted FOI request to Minister in respect of documents relied upon and considered when deciding to approve amendment - Redactions applied to certain documents produced by Minister, pursuant to exemption under s 30 of the Freedom of Information Act 1982 (Vic) - Whether the applicant has reasonable cause to believe that it may have a right to relief - Whether Minister may have acted for improper purpose being to undermine applicant's position in separate VCAT proceeding - Whether there is sufficient evidence to suggest that applicant's subjective belief that the Minister acted outside the scope of his power in approving the amendment is reasonably held, or is a mere suspicion or hunch on its part - National Formalwear Group Pty Ltd v Heldana Pty Ltd, Unreported, Supreme Court of Victoria, 6 March 1998, referred to - Grocon Constructors (Vic) Pty Ltd v Biosciences Research Centre Pty Ltd [2014] VSC 204, referred to - St George Bank Ltd v Rabo Aust Ltd (2004) 211 ALR 147, referred to - No reasonable cause to believe that the decision to approve the amendment was activated by an improper or extraneous purpose - Whether delay in making the application warrants the Court exercising its discretion to refuse relief - Delay not relevant in the absence of prejudice - Murdesk Investments Pty Ltd v The Secretary to the Department of Business and Innovation [2011] VSC 436, referred to - Application dismissed.

Alex Fraser P/L (ACN 004 056 204) v Minister for Planning

Daly AsJ

[\[2018\] VSC 152](#)

18/04/2018

PRACTICE AND PROCEDURE - Judicial Review - Order 56 of the Supreme Court (General Civil Procedure) Rules 2005 - Extension of time within which to commence proceeding - Special circumstances required - No special circumstances disclosed - No arguable case for judicial review - Lazarevic v Victoria Police [2014] VSC 479 - Craig v South Australia [1995] 184 CLR 163 - Application dismissed.

Greco, John Paul v Melbourne City Council & Ors; Greco, John Paul v City Of Stonnington & Ors; Greco, John Paul v Victoria Police & Ors

Keogh J

[\[2018\] VSC 175](#)

13/04/2018

PRACTICE AND PROCEDURE - Plaintiff's failure to comply with order to file and serve proposed amended statement of claim - Plaintiff's inordinate delay and no proper explanation for failure - Where defendant made oral application for a self-executing order - Further directions made for filing of proposed amended statement of claim.

In the matter of the Estate of Wright, Rozalia, deceased. Molnar, Andreas v Butas, Zoltan (in his capacity as the Executor of the Estate of Wright, Rozalia, deceased) (No 5)

McMillan J

[\[2018\] VSC 166](#)

16/04/2018

PRACTICE AND PROCEDURE - Subpoena objection - Public interest immunity - Legitimate forensic purpose - Whether subpoena an abuse of process - Interpretation of Evidence Act 2008 (Vic) s130 - ACN 096 450 770 (formerly AJH Lawyers Pty Ltd) v Mathieson Nominees & Anor [2017] VSC 559 - Morris v Riverwild Management [2009] VSC 654 - Commissioner for Railways v Small (1938) SR NSW 564.

Allon, Edward v RMIT University

Judicial Registrar Clayton

[\[2018\] VSC 167](#)

13/04/2018

PROBATE - Application for a grant of probate of will - Conflicting evidence of the execution of will - Whether will was duly executed - Wills Act 1997, s7 - Administration and Probate Act 1958, s6.

In the matter of the Estate of Panagopoulos, John (also known as Ioannis Panagopoulos) deceased. Application by: Panagopoulos, Konstantina

Ierodiaconou AsJ

[\[2018\] VSC 134](#)

12/04/2018

SALE OF LAND - Purpose of on-sale to developer - Three purchasers - Two purchasers undisclosed - Whether partnership or agency - Nomination of purchaser by named purchaser - Validity of nomination - Ostensible authority - One undisclosed purchaser not consenting to the sale - Equitable interest of undisclosed purchaser - Whether purchasers were a partnership - Whether extinguished by nomination - Equitable interest of nominee purchaser - Nominee purchaser unaware of prior interest - Competing equitable interests - Priority of interests - Better equity - Later equitable interest has priority.

Dai, Zhaoqing v Liu, Robert; Liu, Ji An; Resi Ventures Leakes P/L and Stellini, Carmen

Ginnane J

[\[2018\] VSC 189](#)

24/04/2018

Criminal Division

CRIMINAL LAW - Application for bail - Charges of armed robbery, false imprisonment and unlawful assault - Applicant required to show cause - 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 Benhaddou, Omar

Champion J
[\[2018\] VSC 191](#)
18/04/2018

CRIMINAL LAW - Application for bail - Charges of trafficking and possession of drugs of dependence, assaulting a police officer, negligently dealing with the proceeds of crime, stating a false name and address when requested by a police officer, driving a motor vehicle whilst disqualified, and driving an unregistered motor vehicle - Applicant required to show cause - 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 Amr, Omar

Champion J
[\[2018\] VSC 186](#)
17/04/2018

CRIMINAL LAW - Sentence - Statutory Murder under s 3A of the Crimes Act - Aggravated Burglary - Theft - Deceased fatally stabbed by co-offender in course of armed robbery at home of deceased - Offender was present and participated in foundational offence of armed robbery - Co-offender pleaded guilty to murder at common law, aggravated burglary and theft and assisted authorities in prosecution of offender - Co-offender re-sentenced by Court of Appeal following successful Director's appeal - Offender given leave to change his pleas of guilty after arraignment - Late pleas of guilty - Parity considerations - Offender knew the deceased personally and selected his home for aggravated burglary - Consideration of roles and subjective factors - DPP v Cooper [2018] VSCA 21 - DPP v Arthur [2018] VSCA 37.

Director of Public Prosecutions [DPP] v Williamson, Adam

Jane Dixon J
[\[2018\] VSC 172](#)
17/04/2018

Practice Court

APPEAL - Children's Court of Victoria - Interim accommodation order - Whether in best interest of child to remain with mother - Whether unacceptable risk of harm to child - Unacceptable risk not made out - Child to remain with mother - Appeal dismissed - Purcell v RM [2004] VSC 14; Secretary to the Department of Human Services v Merigan [2006] VSC 129; Secretary to the Department of Human Services v DR [2013] VSC 579 referred to - Children, Youth and Families Act 2005 ss 8, 10, 271.

Secretary to the Department of Health & Human Services v Children's Court of Victoria and Darcy, Rosa (a Pseudonym) and Ronny, Walter (a Pseudonym)

Zammit J
[\[2018\] VSC 183](#)
20/04/2018

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.

BILLS OF EXCHANGE - Whether settlement monies due pursuant to a contract for the purchase of real estate may be satisfied by a purported “promissory note” issued by the purchaser - *Andrews Family Holdings Pty Ltd v Yellow Tractor Pty Ltd* [\[2017\] VSC 682](#) and *ANZ Banking Group Ltd v Evans* [\[2016\] NSWSC 1742](#) followed.

Tresize v Tigerlin Pty Ltd

[\[2018\] VCC 424](#)

Judge Anderson

11/04/2018

CONTRACT - Loan agreement - Amount owing to plaintiffs.

Lombardi & Anor v Yarra Junction Auto Repairs Pty Ltd & Anor

[\[2018\] VCC 502](#)

Judge Cosgrave

19/04/2018

CONTRACTS - LEASE - Master Finance Lease Agreement (MFLA) entered setting up terms and conditions for future leases by company - Guarantee of company’s obligations under MFLA - Whether leases of three cars were entered into pursuant to MFLA - Leases not entered into - Nothing owing under guarantee - Judgment for the defendant.

Fleet Partners v Salikin

[\[2018\] VCC 249](#)

Judge Marks

16/03/2018

COSTS - Application for indemnity costs - Whether special circumstances to justify departure from usual basis - Whether trial exceeded estimated duration due to time spent on unpleaded claims - Whether conduct breached overarching obligations under the Civil Procedure Act 2010.

Kalibrate Asset Management Solutions Pty Ltd v IBM Australia Limited (No 2)

[\[2018\] VCC 414](#)

Judge Cosgrave

10/04/2018

NEGLIGENCE - Motor vehicle collision - Apportionment of liability - Whether plaintiff entitled to hiring cost of alternative vehicles.

Prestigo Pty Ltd v Jackson

[\[2018\] VCC 454](#)

Judge Cohen

23/04/2018

PRACTICE AND PROCEDURE - Application by defendants for summary judgment - Claim by property owners against letting agent and the real estate agent's sole director - Plaintiffs made oral application to substantially amend their statement of claim - Statement of claim struck out with plaintiffs to pay the defendants' costs of the proceeding to date - Orders for limited preliminary discovery by the defendants and the delivery of a proposed further amended statement of claim by the plaintiffs.

Dorash & Anor v Lindemann & Anor

[\[2018\] VCC 446](#)

Judge Anderson

12/04/2018

PRACTICE AND PROCEDURE - Civil jury trial - Verdict of negligence and contributory negligence - Motion by plaintiff for judgment notwithstanding the jury verdict (non obstante veredicto) - Test to be applied - Factors to be considered.

Aycicek v Flowline Industries Pty Ltd (ACN 004 871 489) (Ruling)

[\[2018\] VCC 477](#)

Judge Brookes

18/04/2018

PRACTICE AND PROCEDURE - Defendant's application to set aside judgment entered in default of appearance - Proceeding to set aside judgment on the basis that it had been procured by fraud - Judgment entered in 2000 and judgment sum varied on appeal in 2002 - Judgment in present proceeding entered on 31 January 2018 without notice to the defendant applicant - Issues raised by the application - Hearing refixed and directions given.

Bodycorp Repairers Pty Ltd & Anor v Maisano & Ors

[\[2018\] VCC 448](#)

Judge Anderson

13/04/2018

REAL PROPERTY - Transfer of property allegedly obtained as a result of fraudulent misrepresentations - Misrepresentations not proved.

STANDING - Plaintiffs bankrupt - Rights relating to property vested in Official Trustee in Bankruptcy - Trustee assigned all rights, interest and title in causes of action as pleaded in the statement of claim dated 11 December 2018 to plaintiffs - Plaintiffs later amended statement of claim - Whether amended claims had been assigned - Whether plaintiffs had standing to bring amended claims.

CAUSE OF ACTION - Cause of action assigned - Meaning of cause of action - Whether includes legal remedy sought - *Letang v Cooper* [1964] EWCA Civ 5; [1964] 2 All ER 929 - Cause of action is the factual situation entitling person to obtain a remedy.

STATUTE OF LIMITATIONS - Amendments of pleadings outside limitation period - Amendments introducing new cause of action - Transfer occurred in 1996 - Alleged fraud discovered in 2007 - Proceedings instituted in 2008 - Whether claims statute barred - ss 8 and 27 Limitation of Actions Act 1958 (Vic) - Claims not statute barred.

Cetinkaya v Unal

[\[2018\] VCC 480](#)

Judge Marks

24/08/2018

TESTATOR'S FAMILY MAINTENANCE - Applicants the three daughters of the deceased - Last will of the deceased setting up an elaborate trust - Applicants the beneficiaries under the trust - Breach of moral duty to provide - Trust failed to adequately address provision for the proper maintenance and support of the applicants - Applicants in serious need.

Matheson v Young; Sisson & Wharton v Young

[\[2018\] VCC 436](#)

Judge Misso

12/04/2018

TORT - NEGLIGENCE - DUTY OF CARE - WORKPLACE BULLYING - Accident compensation - Personal injury - Psychiatric injury - Psychiatric illness suffered in the course of employment - Reasonable foreseeability - Employee complaints to employer of bullying conduct by another employee - Whether breach of duty.

Kucevic v Victorian WorkCover Authority

[\[2018\] VCC 503](#)

Judge Brookes

20/04/2018

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 - Workplace Injury Rehabilitation and Compensation Act 2013 - Rejected claims - Aggravation type injury - Acute disc prolapse at home following day's work - No prior work episodes - Previous surgical intervention - Whether prolapse caused by constitutional condition - Whether work a significant contributing factor to injury - Long period of employment - Largely manual work - Ongoing episodes of lifting - Discussion of sufficiency of evidence - Uncertain evidence of weights - Medical reports tendered - Whether plaintiff positively discharged burden of proof - Unsatisfactory history in medical reports - Lack of factual analysis of work duties to prolapse - Applications for review dismissed.

Samoiloff v Grandiflora Nurseries Pty Ltd

[2018] VMC 04

Magistrate P Ginnane

20/04/2018

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

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No new journals were received in the last fortnight

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