



## THE LAW LIBRARY OF VICTORIA

# Library Bulletin

11 May 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](http://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](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).

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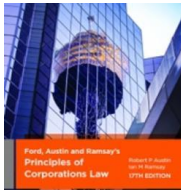
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# New Books

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.



Austin, Robert P. and Ramsay, Ian M., *Ford, Austin and Ramsay's principles of corporation law*  
17<sup>th</sup> ed., LexisNexis Butterworths, Chatswood, 2018  
Call number: 346.066 FOR.17 (VCAT Library)

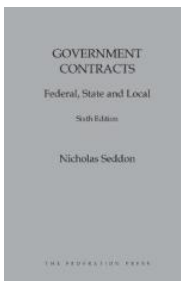


[Link to the book in the catalogue](#)



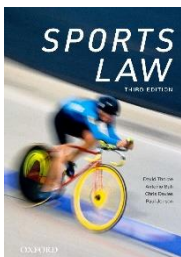
Miller, Russell, *Miller's Australian competition law and policy*  
3<sup>rd</sup> ed., Thomson Reuters (Professional) Australia, Pyrmont, 2018  
Call number: 343.0721 MIL.3 (VCAT Library)

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



Seddon, Nicholas, *Government contracts: federal, state and local*  
6<sup>th</sup> ed., The Federation Press, Leichhardt, 2018  
Call number: 346.023 SED.6 (Supreme Court Library)

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



Thorpe, David, Buti, Antonio, Davies, Christ and Jonson, Paul, *Sports law*  
3<sup>rd</sup> ed., Oxford University Press, South Melbourne, 2017  
Call number: 344.099 THO.3 (Supreme Court Library, VCAT Library)

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

# Legislation

## Victorian Bills

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

- [Appropriation \(2018-2019\) Bill 2018](#)
- [Appropriation \(Parliament 2018-2019\) Bill 2018](#)
- [Electoral Legislation Amendment Bill 2018](#)
- [Justice Legislation Amendment \(Terrorism\) Bill 2018](#)
- [National Redress Scheme for Institutional Child Sexual Abuse \(Commonwealth Powers\) Bill 2018](#)
- [Serious Offenders Bill 2018](#)
- [State Taxation Acts Amendment Bill 2018](#)

## 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:

- *Firearms Amendment Act 2018 No. 2 (SG209 8.5.2018)*
  - Part 3 (s. 38) and remaining provisions of this Act came into operation on 9 May 2018.
- *Food Amendment (Kilojoule Labelling Scheme and Other Matters) Act 2017 No. 2/2017*
  - Parts 2, 3 (sections 4-12) of this Act came into operation on 1 May 2018
- *Transport Legislation Amendment (Road Safety, Rail and Other Matters) Act 2017 No. 68/2017*
  - Sections 4, 5, 7-30, 42, 43, 66-68, 72, 74, 75 of this Act came into operation on 30 April 2018 (SG136 27.3.2018)

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

- *Justice Legislation Amendment (Court Security, Juries and Other Matters) Act 2017 No. 38/2017*
  - Parts 3-5 (sections 15-43), Parts 9 Divisions 1, 2 (sections 64-66), 5 (sections 70, 71) of this Act came into operation by forced commencement 1 May 2018 s.2(4)



## 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

CRIMINAL LAW - Appeal against convictions - Jury direction - Prior inconsistent statement - Where appellant indicted for indecent assault, aggravated indecent assault and rape - Where consent main issue at trial - Where complainant made preliminary complaints to mother and others - Where mother gave evidence at committal hearing - Where mother gave different account at trial - Where trial judge directed jury committal evidence could only be used to assess mother's credibility - Where mother confirmed at trial she had given that evidence at committal and her memory was better at committal - Whether mother actually adopted committal evidence - Whether prior inconsistent statement available to jury to assess complainant's credibility - Whether trial judge misdirected jury.

CRIMINAL LAW - Appeal against convictions - Application of proviso - Where Court of Appeal found erroneous jury direction - Where prosecution disavowed reliance on proviso - Where Court of Appeal applied proviso without notice and notwithstanding disavowal - Whether Court of Appeal bound to put appellant on notice of possibility of applying proviso.

WORDS AND PHRASES - "preliminary complaint", "prior inconsistent statement", "proviso", "substantial miscarriage of justice".

***In the Matter of Questions Referred to the Court of Disputed Returns Pursuant to Section 376 of the Commonwealth Electoral Act 1918 (Cth) Concerning Senator Katy Gallagher***

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

09/05/2018

CONSTITUTIONAL LAW (CTH) - Parliamentary elections - Senate - Questions referred to Court of Disputed Returns by Senate - Where senator was foreign citizen at date of nomination for election - Where renunciation of foreign citizenship registered after return as duly elected senator - Whether senator disqualified by reason of s 44(i) of Constitution because of foreign citizenship - Whether foreign law irremediably prevented participation in representative government.

WORDS AND PHRASES - "a subject or a citizen - of a foreign power", "constitutional imperative", "incapable of being chosen", "irremediably prevent".

***Collins, John v The Queen***

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

09/05/2018

# Victorian Supreme Court Cases

## Court of Appeal

CASE STATED - Public interest immunity - Form of questions - Amendment of questions reserved - Whether findings of fact open to trial judge - Whether conclusion relating to evidence capable of raising a public interest in the accused's fair trial - Matter remitted to trial judge for further consideration having regard to answers to the questions reserved.

***The Queen v Peters, Linton (a Pseudonym)***

Osborn, Kaye, and Niall JJA

[\[2018\] VSCA 115](#)

09/05/2018

CONTRACT - Sale of insurance broker's book - Claim for unpaid instalments of purchase price - Where calculation of subsequent instalments of purchase price 'subject to' a contractual adjustment process - Where purchaser refused to engage in contractual adjustment process - Whether subsequent instalments of unadjusted purchase price are owed if adjustment process is not undertaken - Appeal dismissed.

***Reliance Franchise Partners P/L (ACN 151 750 613) v Ford Kinter & Associates P/L (ACN 009 631 869)***

Whelan, Niall, and Hargrave JJA

[\[2018\] VSCA 106](#)

01/05/2018

CRIME - Sentence appeal - Parity - Co-offender received same total effective sentence and non-parole period - Similarities and dissimilarities - Conclusion open to sentencing judge - Appeal dismissed.

***Yoannidis, Daniel v The Queen***

Osborn, Whelan, and Beach JJA

[\[2018\] VSCA 109](#)

04/05/2018

CRIMINAL LAW - Appeal - Conviction - Jury question - Jury question about evidence given - Judge's answer to jury question - Whether judge's answer erroneous - Whether judge's answer foreclosed important part of defence case - Judge's answer correctly summarised evidence - Judge's answer correct - Not reasonably arguable that judge's answer erroneous - Not reasonably arguable that judge's answer foreclosed any aspect of defence case - Application for leave to appeal refused.

***Nwachukwu, Udochukwa Prince v The Queen***

Tate, Beach, and Kyrou JJA

[\[2018\] VSCA 117](#)

10/05/2018

CRIMINAL LAW - Appeal - Sentence - Rape - Applicant sentenced as an adult for offence committed when a child - Whether sentencing judge erred by sentencing the applicant on the basis that he was an appropriate vehicle for general deterrence - Whether sentence manifestly excessive - Application for leave to appeal refused.

***Rootsey, Colin Michael v The Queen***

Osborn and Priest JJA

[\[2018\] VSCA 108](#)

30/04/2018

CRIMINAL LAW - Appeal - Sentence - Attempted aggravated burglary - Youthful offender - Sentence of two years and four months' imprisonment with non-parole period of 16 months - Whether judge erred in failing to have regard to applicant's evidence on the plea - Whether error resulting from author of pre-sentence report failing to speak to applicant - Whether sentence manifestly excessive - Application for leave to appeal refused.

***Mongrag, Neok v The Queen***

Priest, Osborn, and Kyrou JJA

[\[2018\] VSCA 105](#)

27/04/2018

CRIMINAL LAW - Appeal - Sentence - Incest (representative charge and single count) - Indecent act with a child under 16 years - Incest sentences 6y 6m, 5y 6m - Total effective sentence 9y - Non-parole period 7y - Whether manifestly excessive - Changed sentencing practices - DPP v Dalglish [2016] VSCA 148, DPP v Dalglish (2017) 349 ALR 37, DPP v Dalglish [2017] VSCA 360, Carter v The Queen [2018] VSCA 88 followed - Appeal dismissed.

***Grantley, Richard (a Pseudonym) v The Queen***

Maxwell P and Kyrou JA

[\[2018\] VSCA 112](#)

09/05/2018

CRIMINAL LAW - Appeal - Sentence - Incest (2 charges) - Indecent act with child under 16 (1 representative charge, 4 single charges) - Two complainants - Incest sentences 6y, 5y - Not challenged - Sentence on representative indecent act charge 14m - Whether manifestly excessive - Total effective sentence 11y 5m - Non-parole period 9y - Whether total effective sentence manifestly excessive - Appeal dismissed.

***Phillips, Bernard (a Pseudonym) v The Queen***

Maxwell P and Kyrou JA

[\[2018\] VSCA 114](#)

09/05/2018

CRIMINAL LAW - Appeal - Sentence - Intentionally causing a bushfire (6 charges) - Rolled up charges - Total effective sentence of 5 years with non-parole period of 3 years and 4 months - Whether sentence manifestly excessive - Not reasonably arguable that sentence manifestly excessive - Lenient sentence - Application for leave to appeal refused.

***Ganon, Mark v The Queen***

Priest and Beach JJA

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

04/05/2018



CRIMINAL LAW - Appeal - Sentence - One charge of intentionally causing injury (charge 3), two charges of resisting emergency worker on duty, one charge of failing to answer bail - Charge 3 involved injury to police officer - Sentencing Act 1991 s 10AA(4) prescribed minimum sentence of 6 months' imprisonment for that charge unless court finds under section 10A 'special reason exists' - Magistrate found special reason existed based on applicant's impaired mental functioning at time of offence and imposed 2-year community correction order - On appeal by Director of Public Prosecutions, County Court judge found no special reason existed and imposed sentence of 6 months' imprisonment on charge 3 - Crown concessions that judge made findings on erroneous factual basis and denied applicant procedural fairness - Appeal allowed - Matter remitted to County Court with directions as to scope of further hearing - Sentencing Act 1991 ss 10AA, 10A - Criminal Procedure Act 2009 s 286.

***El-Lababidi, Ahmed v The Queen***

Tate, Kyrou, and Ashley JJA

[\[2018\] VSCA 116](#)

09/05/2018

CRIMINAL LAW - Appeal - Sentence - Sexual offences against children - Course of conduct charges - Incest, sexual penetration of 17 year old child under care (3 charges), attempted rape - Victim was stepdaughter aged 12-18 - Sentenced to 15 years' imprisonment with non-parole period of 8 years - Whether manifestly excessive - Different forms of penetration over same period - Breaks in period of offending - Application for leave to appeal refused - DPP v Dalgliesh [2016] VSCA 148, McCray v The Queen [2017] VSCA 340, referred to - Criminal Procedure Act 2009 sch 1, cl 4A.

***Crawford, Harris (a Pseudonym) v The Queen***

Maxwell P and Kyrou JA

[\[2018\] VSCA 113](#)

09/05/2018

CRIMINAL LAW - Appeal - Sentence - Trafficking drugs of dependence (3 charges) - Sentenced to 2 years and 10 months' imprisonment with non-parole period of 1 year and 10 months - Whether judge mistook facts of offending - Whether sentence involved double punishment - Whether sentence infringed principle of parity - Whether sentence was manifestly excessive - Errors contended for by applicant not reasonably arguable - Manifest excess not reasonably arguable - Application for leave to appeal refused.

CRIMINAL LAW - Appeal - Fresh evidence - Applicant's visa cancelled after sentencing - Cancellation of applicant's visa not throwing light on any pre-existing fact - Cancellation of visa not an event showing sentence has turned out to be excessive - No miscarriage of justice - Application to admit fresh evidence refused.

***Tran, Du Thanh v The Queen***

Tate and Beach JJA

[\[2018\] VSCA 107](#)

01/05/2018



CRIMINAL LAW - Sentence - Appeal - Two charges of dealing with money reasonably suspected of being proceeds of crime contrary to s 400.9 of the Criminal Code Act 1995 (Cth) - One charge of attempting to dishonestly obtain a financial advantage by deception from a Commonwealth entity contrary to ss 11.1(1) and 134.2(1) of the Criminal Code Act 1995 (Cth) - Whether accused's subjective knowledge or belief relevant to sentencing for absolute liability offence - Whether sentencing judge failed to consider comparable cases - Whether sentence manifestly excessive - Leave to appeal refused.

***Samarakoon, Arjuna v The Queen***

Beach and Niall JJA

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

11/05/2018

CRIMINAL LAW - Sentence - Application for leave to appeal - Aggravated burglary - Armed robbery - Causing serious injury recklessly in circumstances of gross violence - Plea of guilty - Total effective sentence of 12 years' imprisonment - Non-parole period of nine years - Whether judge erred in making adverse finding not proved beyond reasonable doubt - Whether procedural fairness denied - Whether judge erred in assessing applicant's prospect of rehabilitation as no better than poor - Whether judge erred in failing to take into account that the sentence will be served in protective custody - Whether sentence manifestly excessive - Leave to appeal refused.

***Till, James v The Queen***

Maxwell P, Tate and Niall JJA

[\[2018\] VSCA 122](#)

11/05/2018

EVIDENCE - Client legal privilege - Waiver - Whether privilege in respect of documents subject to pre-trial discovery waived pursuant to Evidence Act 2008, ss 122(2), 131A - Party claiming privilege alleges misleading or deceptive conduct in sale of business - Whether issue waiver by alleging knowledge and reliance in entering into sale contract - Whether maintenance of privilege inconsistent with withholding privileged communications about sale transaction - *Thomason v Campbelltown Municipal Council* (1939) 39 SR (NSW) 347; *Mann v Carnell* (1999) 201 CLR 1; *DSE (Holdings) Pty Ltd v Intertan Inc* (2003) 127 FCR 499; *Commissioner of Taxation v Rio Tinto Ltd* (2006) 151 FCR 341; *Vic Hotel Pty Ltd v DC Payments Australasia Pty Ltd* (2015) 321 ALR 191; *Macquarie Bank Ltd v Arup Pty Ltd* [2016] FCAFC 117 considered - Evidence Act 2008, s 122(2) applied.

***Viterra Malt P/L (ACN 096 519 658); Viterra Operations P/L (ACN 007 556 256) (formerly Viterra Operations Ltd (ACN 007 556 256)); Viterra P/L (ACN 084 962 130) (formerly Viterra Ltd (ACN 084 962 130)) and Glencore International AG v Cargill Australia Ltd (ACN 004 684 173) and Cargill, Incorporated***

Whelan, Kyrou and McLeish JJA

[\[2018\] VSCA 118](#)

11/05/2018

PRACTICE AND PROCEDURE - Application by first respondent for security for costs of application for leave to appeal and appeal - Where evidence that applicant owns real property unencumbered by registered interest - Where proposed grounds of appeal reasonably arguable and may raise issues of general application - Where order for security may stultify appeal - Application refused - Rule 64.38 Supreme Court (General Civil Procedure) Rules 2015.

***Botsman, Wendy Diane v Bolitho, Laurence John; Banksia Securities Limited (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 Livingston; 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; Chaucer Syndicates Limited; Lindholm, John Ross, Mccluskey, Peter Damien in their capacity as joint and several special purpose receivers of Banksia Securities Limited (receivers and managers pppointed) (in liquidation) (ACN 004 736 458); Banksia Securities Limited (receivers and managers appointed) (in liquidation) (ACN 004 736 458)***

Whelan and Niall JJA

[\[2018\] VSCA 111](#)

07/05/2018

## Commercial Court

ARBITRATION - Application for ruling on the jurisdiction of a domestic arbitral tribunal - Whether the prohibition of arbitration agreements under the Domestic Building Contracts Act 1995 applies - *Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs of the Government of Pakistan* [2010] 3 WLR 1472 - Commercial Arbitration Act 2011 s 16(9) - Domestic Building Contracts Act 1995 ss 5, 6 and 14 - Domestic Building Contracts Regulation 2017 reg 7 - International Arbitration Act 1974 (Cth) sch 2 - UNCITRAL Model Law on International Commercial Arbitration 1985 art 16(3).

***Lin Tiger Plastering P/L v Platinum Construction (Vic) P/L***

Croft J

[\[2018\] VSC 221](#)

10/05/2018

CONTRACTS - General contractual principles - Construction and interpretation of contracts - Whether ambiguity required for admission of extrinsic materials - Effect of shareholders agreement on employment agreement.

CONTRACTS - Employment agreement - Discharge and breach - Termination of employee or director at common law - Whether termination clause ousts right of termination at common law.

CONTRACTS - Employment agreement - Discharge and breach - Repudiation - Whether dismissal was wrongful - Whether wrongful dismissal is repudiation of employment agreement - Whether acceptance of repudiation is effective.

EQUITY - Fiduciary obligations - Nature of fiduciary relationship - Consistency with employment agreement - Whether prescriptive equitable duties available - Diversion of principal's resources - Whether knowledge of extraneous activities is informed consent.

EMPLOYMENT LAW - Contract of service - Long service leave entitlements - Long Service Leave Act 1992 (Vic), s 72.

STATUTORY OPPRESSION - Oppressive, unfairly prejudicial or unfairly discriminatory conduct towards member - Standing of minority shareholder - Manipulation of books and records - Legitimate expectation of involvement in management and operations - Divestment of assets and profit shifting - Adoption of new marketing strategies - Whether claim is defeated by 'unfairness' of the applicants' conduct - Corporations Act 2001 (Cth), s 232.

STATUTORY OPPRESSION - Remedies for oppressive conduct - Order for the purchase of shares - Corporations Act 2001 (Cth), s 233.

CONTRACTS - Remedies - Specific performance - Order enforcing the terms of an option - Damages.

***Mair, Nelson Keith Robertson v Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed). And Between: Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed); Herringbone P/L (ACN 135 481 953) (Administrators Appointed); Rhodes & Beckett Group P/L (ACN 135 008 801); Van Laack Australia Holdings P/L (ACN 159 334 460) and Van Laack GmbH v Mair, Nelson Keith Robertson; Luxury Retail No 1 P/L (ACN 166 798 723); Luxury Retail Group P/L (ACN 604 195 717); Balnaring Holdings P/L (ACN 118 886 669). Between: Balnaring Holdings P/L (ACN 118 886 669) as trustee for the Balnaring Trust v Van Laack Australia Holdings P/L (ACN 159 334 460); Rhodes & Beckett P/L (ACN 118 576 364) (Administrators Appointed); Rhodes & Beckett Group P/L (ACN 135 008 801) and Van Laack GmbH***

Digby J

[\[2018\] VSC 132](#)

29/03/2018

CORPORATIONS - External administration - Sections 588E, 588G and 588M of the Corporations Act (2001) (Cth) - Defendant a director of company in liquidation - Defendant alleged to have been involved in insolvent trading - Company incurred liabilities to Commissioner of Taxation at a time when defendant was a director - Company did not maintain proper books - Presumption of insolvency arising by operation of section 286 of the Corporations Act (2001) (Cth) - Declarations and orders made in favour of the plaintiffs.

***Rambaldi, Gess Michael and Vasudevan, David Raj as joint and several liquidators of Rice Bar Restaurant P/L (In Liquidation) (ACN 119 396 655) v Rice Bar Restaurant P/L (In Liquidation) (ACN 119 396 655)***

Gardiner AsJ

[\[2018\] VSC 218](#)

04/05/2018

CORPORATIONS - Mossgreen Pty Ltd (in liquidation) carried on business as an auctioneer - Company kept customers' goods in warehouses - Administrators gave up possession of warehouse owned by the plaintiff - Plaintiff now in possession of customer's goods - Liquidators do not intend to return the goods to customers - Application by plaintiff landlord for the appointment of receiver of the goods in its warehouse to assist owners to be given their goods - Application refused.

CORPORATIONS - Appointment of a receiver under s 27 of the Supreme Court Act 1958 or under the Court's inherent jurisdiction - Jurisdiction discussed.

CONSUMER PROTECTION - Owners of goods entitled to delivery up of the goods under Part 4.2 of the Australian Consumer and Fair Trading Act 2012 (Vic) - Appointment of receivers may add to the charges the owners of the goods must pay to obtain delivery up of the goods and delay obtaining delivery up of goods - Opportunity given to owners of the goods to exercise rights under the Australian Consumer and Fair Trading Act 2012 (Vic) without costs and possible delays associated with appointment of a receiver.

***In the matter of Mossgreen P/L (in liquidation) Between Sobraz P/L and Robertson, Neil Robson J***

[\[2018\] VSC 230](#)

09/05/2018

COSTS - Trial over 3 Stages - Plaintiffs largely unsuccessful - Defendant trustees in breach of Trust but successful at Stages 2 and 3 - Approach to costs - Costs decided on success at each Stage.

COSTS - Whether defendant entitled to indemnity costs - Defendant's conduct also unsatisfactory - Defendants failed to concede breach of trust until trial of Stage 1 - No entitlement to indemnity costs.

CIVIL PROCEDURE - Overarching obligations - ss23 and 24 Civil Procedure Act 2010 (Vic) - Overarching obligations to narrow issues in dispute and ensure costs are reasonable and proportionate - s28(2) Civil Procedure Act 2010 (Vic) - Court's power to take contravention of overarching obligations into account in exercising discretion as to costs.

***Attorney-General of Victoria on the relation of The Presbyterian Church of Victoria Trusts Corporation and The Presbyterian Church of Victoria Trusts Corporation v Anstee, Dorothy Rae; Nuske, James Frederick; Evans, Bruce Charles; Holman, Helen Anne and Kerss, Paul Lindsay as Trustees of the Scots' Church Properties Trust and as Trustees of the Assembly Hall of the Presbyterian Church of Victoria; Sherman, Douglas in his capacity as representative of the Board of Management of the Scots' Church Melbourne and Hearn, Harry Meares***

Sifris J

[\[2018\] VSC 200](#)

27/04/2018

EQUITY - Trusts - Constructive Trust - Whether funds held on constructive trust - *Muschinski v Dodds* (1985) 160 CLR 583 - Declaration of constructive trust.

CORPORATIONS - Insolvency - Whether fund subject to statutory lien in respect of remuneration and expenses incurred by former Administrators - ss443D and 443F Corporations Act 2001 (Cth) - Statutory lien effective - Interaction with priority regime provided by ss443E(1) and 556 Corporations Act 2001 (Cth) - *Weston v Carling* [2000] NSWSC 693 - Former Administrators entitled to assert statutory lien against funds held on trust. Whether fund subject to equitable lien in respect of remuneration and expenses incurred by former Administrators - *Re Universal Distributing Company Ltd (in liq)* (1933) 48 CLR 171 - Whether work done by former Administrators was sufficiently connected with the recovery, care, or preservation of assets - Connection insufficient - No equitable lien.

***Valdii Investments P/L (ACN 112 181 254) v Specialist Australian Security Group P/L (in liquidation) (ACN 094 807 173) And Between: Specialist Australian Security Group P/L (in liquidation) (ACN 094 807 173) and Jess, Matthew James and Deppeler, Nathan Lee in their capacity as joint and several liquidators of Specialist Australian Security Group P/L (in liquidation) (ACN 094 807 173) and Valdii Investments P/L (ACN 112 181 254) and Abcit P/L (in liquidation) (ACN 082 365 339)***

Sifris J

[\[2018\] VSC 199](#)

27/04/2018

PRACTICE AND PROCEDURE - Appeal from an Associate Justice's refusal to permit a lay advocate to appear - Relevant principles to be applied with respect to applications for parties to be assisted in court by 'McKenzie Friends' and lay advocates - No error by the Associate Justice - Appeal dismissed.

PRACTICE AND PROCEDURE - Principles to be applied on application for summary judgment - Plaintiff granted summary judgment and defendants' counterclaims summarily dismissed.

CONSTITUTIONAL LAW - Notice requirements under s 78B Judiciary Act (Cth) only arises if the constitutional point is real and substantial.

***Members Equity Bank P/L (ACN 070 887 679) v Elefterescu, Horia Romeo Razvan and Elefterescu, Elena***

Riordan J

[\[2018\] VSC 223](#)

09/05/2018

PRACTICE AND PROCEDURE - Application by mortgagee for possession of land - Mortgagor dead - No grant of probate or letters of administration in respect of the estate of the deceased mortgagor - Proceeding commenced against the estate of the deceased person as permitted by r 9.08(1) & (2) of the Supreme Court (General Civil Procedure) Rules 2015 (Vic) ('Rules') - Where the deceased died leaving a will - Whether appropriate case to apply for appointment of personal representative of the estate pursuant to r 9.08(5)(a)(i) or alternatively r 16.03(1)(b) of the Rules - Whether appropriate to make order under r 16.03(1)(a) of the Rules - Where executor of the will of the deceased mortgagor refuses to consent to be appointed to represent the estate pursuant to r 16.03(1)(b) of the Rules - Order made permitting the plaintiff mortgagee to proceed in the absence of a person to represent the estate of the deceased mortgagor - Australia and New Zealand Banking Group Limited v The Estate of Balding [2016] VSC 728 referred to.

WILLS AND ESTATES - Debtor died leaving a will - Executor declines to apply for a grant of probate - Proceedings against the estate of the deceased by creditor who is mortgagee - Mortgagee seeking possession of property of the deceased and payment of debt - Application to appoint person to represent estate of deceased or to proceed in the absence of a person to represent the estate - Administration and Probate Act 1958 (Vic), s 29 - Supreme Court (General Civil Procedure Rules) 2015 (Vic), 9.08(1), 9.08(5)(a)(i), 16.03(1)(a), 16.03(1)(b).

***Bendigo and Adelaide Bank Ltd v The Estate of McLean***

Derham AsJ

[\[2018\] VSC 215](#)

04/05/2018

PRACTICE AND PROCEDURE - Application for recusal by trial judge - Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 - S & M Motor Repairs Pty Ltd v Caltex Oil (Australia) Pty Ltd (1988) 91 FLR 175 - AJH Lawyers Pty Ltd v Careri & ors (2011) 34 VR 236 - Referred to and affirmed in Michael Wilson & Partners Limited v Nicholls (2011) 244 CLR 427.

***QBH Commercial Enterprises P/L (ACN 163 992 498) (in liquidation) v Dalle Projects P/L (ACN 147 573 948); Armour Legal P/L (ACN 613 816 363); Mifsud, Jordan and Burton, Brian***

Croft J

[\[2018\] VSC 231](#)

10/05/2018



PRACTICE AND PROCEDURE - Application to vary an undertaking - Discretionary considerations - Change of material circumstances - Adequacy of security.

PRACTICE AND PROCEDURE - Application to amend - Amendment without real prospect of success - Pleading effecting an affirmation of contract thereby precluding viability of leading repudiation and termination.

***Mondous, Souhail; Kameel P/L (ACN 006 636 442) (as Trustee for the Souhail Mondous Family Trust); Casdar P/L (ACN 005 282 495) (as Trustee for the Viewhill Estate Unit Trust); Decleah Investments P/L (ACN 100 717 191); Frontlink P/L (ACN 074 034 496); Oakbee P/L (ACN 006 933 777) (as Trustee for the Natreen Investment Trust); Rainn P/L (ACN 101 176 952) (as Trustee for the Rainn Unit Trust) Prince Removal & Storage P/L (ACN 065 148 594) (as Trustee for the PRS Unit Trust); S & N Super Fund P/L (ACN 116 380 057) (as trustee for the Souhail Mondous Superannuation Fund) v Sebastian Canzoneri; Dapto Ranges P/L (ACN 065 214 486) (as trustee for the CSP Wallpak Unit Trust); Citek P/L (ACN 100 767 164) (as Trustee for the Caspeda Unit Trust); Renfro P/L (ACN 100 615 674); Rulinda Investments P/L (ACN 088 744 298); Oliana Foods P/L (ACN 140 768 716). And Between: Dapto Ranges P/L (ACN 065 214 486) (as trustee for the CSP Wallpak Unit Trust) v Victoree P/L (ACN 106 132 334) (as Trustee for the Wallan Estate Unit Trust); Update P/L (ACN 106 132 245) (as trustee for the Update Unit Trust); S & N Super Fund P/L (ACN 116 380 057) (as Trustee for the Souhail Mondous Superannuation Fund); Kameel Pty Ltd (ACN 006 636 442) (as Trustee for the Souhail Mondous Family Trust) and Mondous, Souhail***

Digby J

[\[2018\] VSC 194](#)

28/04/2018

PRACTICE AND PROCEDURE - Interlocutory injunction - Recovery of chattels from land - Impact on purchaser - Mandatory injunction - Third party interest - Breach of deed of settlement - Serious question to be tried - Balance of convenience - Damages an adequate remedy - Limited relief.

***Narain Holdings P/L (ACN 120 783 726); GDM Technologies P/L (ACN 091 263 704); Narain, Ravi Amrit; Narain, Amrit Ravi; Narain, Edwina Kate and Latham; Christopher John v Questco P/L (ACN 005 991 499)***

Connock J

[\[2018\] VSC 220](#)

04/05/2018

## Common Law Division

ADMINISTRATIVE LAW - Transport accident claims - Claimant seeking VCAT review of Transport Accident Commission's decision not to allow medical claims - Procedural orders of VCAT to facilitate review - Compulsory conference - Consent orders ending VCAT proceeding - Appeal by claimant - Associate Justice refused leave - Appeal to Court - No error established - Appeal dismissed.

***Russo, Frank v Transport Accident Commission***

Ginnane J

[\[2018\] VSC 203](#)

27/04/2018



APPEAL - Appeal from decision of delegate of the Secretary to the Department of Justice and Regulation - Appeal from decision of Commissioner for Corrections (Victoria) - Whether riots at the Metropolitan Remand Centre on 30 June and 1 July 2015 amounted to an 'emergency' - Whether Commissioner for Corrections acted within power - Whether Commissioner for Corrections considered principle beyond that permitted in the statute - Whether applicant entitled to reasons - Whether Commissioner for Corrections showed ostensible bias - Appeal allowed - Application remitted to delegate of Secretary of the Department of Justice and Regulation - Corrections Act 1986 (Vic) s 58E.

***Kheir, Ali v Secretary to the Department of Justice and Regulation and Commissioner of Corrections (Victoria)***

T Forrest J

[\[2018\] VSC 222](#)

11/05/2018

CONTRACT - Ostensible authority of director - Whether director held out as authorised to bind company by previous loan agreement negotiations - Whether lender relied on holding out.

RESTITUTION - Unjust enrichment not a cause of action - Money paid under mistake - Money paid to third party supplier of services - Liability of recipient of third party services.

MORTGAGE - Principles of construction of mortgage terms - Whether moneys subsequently paid by mortgagee to builder recoverable from mortgagor under the mortgage.

***Berkerly P/L (ACN 164 237 512) (as trustee for the Berkerly Unit Trust) v Millbrook Finance P/L (ACN 110 264 278)***

Riordan J

[\[2018\] VSC 213](#)

04/05/2018

COSTS – Costs to follow the event – Whether indemnity costs appropriate – Whether plaintiff issued proceedings in appropriate court – Supreme Court (General Civil Procedure) Rules 2015 rr 26.03(4), 63.24, 63.25.

***In the matter of the will and estate of Ribbera, Annunziata, deceased. Ribbera, Salvatore v Artusa, Nicola and Cannizzaro, Liberata (in their capacity as the Executors of the Estate of Annunziata Ribbera, deceased)***

McMillan J

[\[2018\] VSC 233](#)

10/05/2018

COSTS - Priority dispute - Plaintiff's interest first in time but defendant found to have the better equity - Whether costs should follow the event - Combined costs of the parties nearly equivalent at trial to the amount in issue - Criticisms made of the extent of the defendant's inquiries before obtaining its interest - Held that in all the circumstances neither of these considerations warrants departure from the usual approach to costs - Consideration of s 24 Civil Procedure Act 2010 (Vic).

***Gogetta Equipment Funding P/L v Mark & Liz P/L (No 2)***

Lansdowne AsJ

[\[2018\] VSC 212](#)

03/05/2018

COSTS - Whether plaintiffs' costs reasonable and proportionate to the issues in dispute - Civil Procedure Act 2010, s 24.

***Robinson, James William (In His Capacity As Executor Of The Will And Estate Of Bruce Desmond Andrews, Deceased); Raleigh, Simon John (In His Capacity As Executor Of The Will And Estate Of Bruce Desmond Andrews, Deceased) v Jones, Jennifer Lee; Victorian Animal Aid Trust***

McMillan J

[\[2018\] VSC 202](#)

02/05/2018

DEFAMATION - Application for assessment of damages - Undefended - Interlocutory judgment entered for the defendant to pay the plaintiff damages to be assessed and costs fixed at \$3,800 - Plaintiff sought \$230,000 in damages for non-economic loss, including aggravated damages, and indemnity costs - Plaintiff alleged that defendant had published defamatory article headlined 'Hotel Management CEO makes disastrous press blunder' - Defamatory imputations made out - Consideration of factors relevant to assessment of damages - Defamation Act 2005 (Vic), ss 34 and 35 - Carson v John Fairfax & Sons Ltd [1993] HCA 31; (1993) 178 CLR 44, referred to - Vindication of plaintiff's reputation - Not merely the breadth of the publication but the nature of the publication's industry audience as a relevant consideration - 'Grapevine effect' - Distress and indignity suffered by plaintiff - Whether consideration of comparable cases in assessing whether an award of damages is appropriate, particularly where application is undefended - Rogers v Nationwide News Pty Ltd [2003] HCA 52; (2003) 216 CLR 327, referred to - Cerutti v Crestside Pty Ltd and anor [2014] QCA 33, referred to - Countervailing factors - Brief duration of publication - No sustained or malicious campaign of harassment by defendant - No direct evidence of actual harm to the plaintiff's reputation - Wilson v Bauer Media Pty Ltd [2017] VSC 521, referred to - Sheales v The Age and Ors [2017] VSC 380, referred to - Manefield v Association of Quality Childcare Centres of NSW Inc [2010] NSWSC 1420, referred to - Dods v McDonald (No 2) [2016] VSC 201, referred to - Plaintiff awarded \$150,000 in damages inclusive of aggravated damages - Indemnity costs not awarded as matters relied upon were relevant factors supporting an award of aggravated damages.

***Fraser, Trent v Business News Group P/L (ACN 606 324 403)***

Daly AsJ

[\[2018\] VSC 196](#)

03/05/2018

DEFAMATION - Pleading - Justification defence - Whether particulars sufficient - Fair comment defence - Whether words capable of being understood as opinion - General Steel Industries Inc v Commissioner for Railways (New South Wales) [1964] HCA 69; (1964) 112 CLR 125; State of New South Wales v IG Index plc & Ors [2007] VSCA 212 applied.

***Tsamis, Martha v The State of Victoria (No 2)***

Keogh J

[\[2018\] VSC 209](#)

30/04/2018

EXECUTION - Warrant of seizure and sale - Sale of property conducted by sheriff under the Sheriff Act 2009 - Duties of sheriff compulsorily selling property under the Sheriff Act 2009 - Duties of sheriff at common law - Standard of care required of the sheriff - Substantial value in debtor's equity in land - Breach of duty to act reasonably in the interests of both the judgment debtor and judgment creditor in order to obtain a fair price - Sheriff Act 2009 ss 7, 13, 24, 25.

***Hoskin, Julie v Griffin, Kelvin; The Sheriff for The State of Victoria; Registrar of Titles; Ask Funding Ltd ACN 094 503 585 and Merhabi, Mouhammad***

Quigley J

[\[2018\] VSC 216](#)

07/05/2018

EXECUTORS AND TRUSTEES - Where executors disagree over administration of estate and conduct of multiple family provision claims made against the estate - Solicitor executor seeks to be discharged as executor of estate - Remaining executor wishes to continue as executor - Where claimants in family provision claims object to remaining executor continuing as only executor of estate on grounds of conflict of interest and duty - Where claimants in family provision claims seek appointment of an alternative and independent administrator - Administration and Probate Act 1958, s 34(1)(b), Trustee Act 1958, ss 48(1), 51.

***In the matter of the will and estate of Flavel, Albert George, deceased, and In the matter of an application under s 34 of the Administration and Probate Act 1958 and ss 48 and 51 of the Trustee Act 1958. Application by: Lipshut, Philip Keith (as executor of the will and estate of Albert George Flavel, deceased)***

McMillan J

[\[2018\] VSC 228](#)

08/05/2018

INJUNCTION - Interlocutory - Application to restrain registered proprietor of land held on trust for the plaintiff from selling or dealing with the land - Prima facie case that land held on express trust, alternatively a resulting or constructive trust - Balance of convenience in favour of restraint by injunction - Australian Broadcasting Corporation v O'Neill (2006) 227 CLR 57; Bradto Pty Ltd v State of Victoria; Tymbook Pty Ltd v State of Victoria (2006) 15 VR 65.

TRUST AND TRUSTEES - Express trust - Creation - Intention to create trust - Transfer of real property to first defendant to be held on trust for plaintiff - Requirements of writing - Fraud exception - Schweitzer v Schweitzer [2012] VSCA 260 referred to.

RESULTING TRUST - Transfer of real property to first defendant - Absence of valuable consideration - No presumption of advancement - House v Caffyn [1922] VLR 67; Wirth v Wirth (1956) 98 CLR 228; Re Association for Visual Impairment The Homeless and The Destitute Inc. (in liquidation) (No 2) [2014] VSC 183, referred to.

***Aboriginal Evangelical Fellowship Australia Inc (Victorian Registration Number A0025815V) v Aboriginal Evangelical Church Inc (Victorian Registration Number A0029305V); Hayden, Clive; Williams, David Bert; Registrar of Titles***

Derham AsJ

[\[2018\] VSC 208](#)

01/05/2018

JUDICIAL REVIEW - Conviction by County Court for road safety offence on appeal from the Magistrates' Court - Whether open to the judge to convict in the absence of evidence from the informant - Whether judge's reasons adequate - Held: no error shown - Proceeding dismissed - Road Safety Act 1986 (Vic) ss 49 (1)(e), 55(2), 49(1)(a) and (b).

***Toner, Nick v Beecroft, Bradley and County Court of Victoria***

Lansdowne AsJ

[\[2018\] VSC 229](#)

10/05/2018

JUDICIAL REVIEW - Convictions in the Magistrates' Court for motor vehicle offences - Challenge to Magistrates' Court's jurisdiction to hear charges - No substance in challenge - No error by Magistrate - Road Safety Act 1986; Road Safety (Vehicle) Regulations 2009.

***Monteith, Paul Mellersh v Fitzgerald, Gaylor Estelle and The Magistrates' Court of Victoria***

Ginnane J

[\[2018\] VSC 217](#)

03/05/2018

JUDICIAL REVIEW - Validity of warrants - Delegation - Form of authorisation - 'authorise' - Procedural fairness - Reasonable grounds - Warrants too wide - Prevention of Cruelty to Animals Act 1986 ss 1, 24C, 24G, 24K, 38.

JUDICIAL REVIEW - Execution of warrants - Reasonableness - Prevention of Cruelty to Animals Act 1986 ss 24G, 24K.

STATUTES - Interpretation - Delegation - 'in and for Victoria' - Interpretation of Legislation Act s 48.

***Healey, Heather v Royal Society For the Prevention of Cruelty to Animals Victoria***

Quigley J

[\[2018\] VSC 190](#)

19/04/2018

JUDICIAL REVIEW AND APPEAL - Practice and procedure - Discovery - Application for discovery in judicial review proceeding - Whether plaintiff has a good, or at least an arguable case, proof of which would be aided by discovery-Supreme Court (General Civil Procedure) Rules 2015 rr 29.01(1), 29.01.1(1), 29.07 -Civil Procedure Act 2010 ss 54, 55 - Australian Society for Kangaroos Inc. v Secretary, Department of Environment, Land, Water and Planning [2018] VSC 88 - Moreland City Council v Minister for Planning [2014] VSC 468 - Application dismissed.

***Rich, Hugo Alistair v Ryan, Brett (Acting in his capacity as the General Manager of H. M. Prison Barwon and for Corrections Victoria)***

Ierodiaconou AsJ

[\[2018\] VSC 201](#)

01/05/2018

LIMITATION OF ACTIONS - Defamation - Application by the first and second defendants ('defendants') for summary judgment against the plaintiff in reliance on s 5(1AAA) of the Limitation of Actions Act 1958 (Vic) ('Act') - Application by the plaintiff for an extension of time under s 23B of the Act - Plaintiff alleged defendants had defamed him by preparing or contributing to a letter sent by an accounting firm to the ATO - Plaintiff's solicitors sent a 'concerns' notice as defined in s 14(2) of the Defamation Act 2005 (Vic) to the accounting firm one day prior to the expiry of the applicable one year limitation period - Whether plaintiff established that it was not reasonable to have commenced the proceeding within one year of the date of publication - Consideration of whether certain factors complained of by the plaintiff amounted to it being 'not reasonable' to bring the proceeding within time - Plaintiff's application dismissed - Any extension of time granted would not have exceeded one month - Defendants' application granted - *Casley v Australian Broadcasting Corporation* [2013] VSC 251, referred to - *Johnston v Holland (No 2)* [2017] VSC 597, referred to  
***Brott, Issac Alexander v FGD P/L t/as Farrar Gesini & Dunn (ABN 44 075 255 006); Thomson, Petranella and Rosenbaum, Norman***  
Daly AsJ  
[\[2018\] VSC 182](#)  
25/04/2018

PRACTICE AND PROCEDURE - Application for approval of compromise of a claim under Part IV of the Administration and Probate Act 1958 (Vic) - Plaintiff bankrupt - When compromise entered into parties believed plaintiff to have been discharged from bankruptcy - Whether substratum of compromise changed - Whether appropriate to approve compromise - Bankruptcy of plaintiff is a relevant consideration in any provision made by the Court under Part IV of the Act - Substratum for approval of compromise changed - Application adjourned - *Collicot v McMillan* [1999] 3 VR 803; *Patricia Morris v Smoel* [2014] VSC 31; *Poesch v Grosvero* [2013] VSC 596 referred to.  
BANKRUPTCY - Approval of compromise - Plaintiff an undischarged bankrupt at time of entry into compromise - Rights of trustee in bankruptcy to intervene - Trustee holds a statutory interest in the entitlement of the plaintiff under the compromise - Right to intervene - *Levy v Victoria* (1997) 189 CLR 579; *Collicot v McMillan* [1999] 3 VR 803.  
***In the matter of Part IV of the Administration and Probate Act 1958 and In the matter of the Will and Estate of Rosca, Adrian Claudiu, deceased. Mavridis, Vicky v Andronescu, Cornelia (who is sued as the Executor of the Will of the abovenamed deceased)***  
Derham AsJ  
[\[2018\] VSC 227](#)  
08/05/2018

PRACTICE AND PROCEDURE - Costs - Plaintiff's application raised a jurisdictional question - Finding that Supreme Court does not have jurisdiction to determine application - No basis for departing from usual rule as to costs - *Oshlack v Richmond River Council* (1998) 193 CLR 72.  
***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 (No 2) (Costs)***  
Niall JA  
[\[2018\] VSC 207](#)  
02/05/2018

PRACTICE AND PROCEDURE - Preliminary discovery - Whether reasonable grounds to believe that plaintiff may have right to obtain relief against defendants - Whether sufficient information to enable plaintiff to decide whether to commence proceeding - Preliminary discovery ordered - Supreme Court (General Civil Procedure) Rules 2015, r 32.05.

EVIDENCE - Admissibility of hearsay evidence in interlocutory applications - Supreme Court (General Civil Procedure) Rules 2015, rr 32.05, 43.03; Evidence Act 2008, ss 60 and 75.

*Pandolfo, Anna Maria (in her capacity as Administratrix of the Estate of Adrian Paul Fiore Finadri) v Finadri, Walter; Finadri, Marco (in his capacity as trustees of the Finadri Superannuation Fund); Finadri, Maria (in her capacity as trustees of the Finadri Superannuation Fund); Finadri Windows P/L (ACN 005 544 249) (in its own capacity and in its capacity as trustee for the Finadri Family Trust); Finadri Properties P/L (ACN 073 141 090) (in its capacity as trustee for the Finadri Properties Unit Trust); Aquaflex P/L (ACN 006 888 400) (in its capacity as trustee for the Finadri Investment Trust); Rhoden Investments P/L (ACN 103 132 789); FWICO P/L (ACN 069 984 256); Tartaglia Lawyers P/L (ACN 167 518 729)*

Derham AsJ

[\[2018\] VSC 211](#)

03/05/2018

VEXATIOUS PROCEEDINGS - Extended litigation restraint order - Application to vary or revoke - Application dismissed - Vexatious Proceedings Act 2014 ss 17, 65.

*Karam v Palmone Shoes P/L*

Ginnane J

[\[2018\] VSC 206](#)

01/05/2018

## Criminal Division

CRIMINAL LAW - Application for bail - Children's Court - Charges of theft and committing an indictable offences while on bail - 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 B K T***  
Champion J

[\[2018\] VSC 240](#)

17/04/2018

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Accused repeatedly drove car towards partner, intending to frighten but not to hit him, and accidentally collided with parking sign, freakishly causing pole to bend and edge of sign to strike and cleave his head, killing him instantly - Incident immediately preceded by partner dragging sleeping accused out of car by hair and assaulting her further - Incident also preceded by partner assaulting accused and splitting her eyebrow the previous evening - Long history of domestic violence and controlling behaviour in relationship - Significant provocation - Reduced moral culpability - Early plea of guilty - Remorse - Hardship of imprisonment - Very good prospects of rehabilitation - Mercy - Unusual case calling for unusual sentence - Shorter non-parole period than usual - Sentence of five years' imprisonment with non-parole period of two years - But for plea of guilty, sentence of seven-and-a-half years' imprisonment with non-parole period of four years - Sentencing Act 1991 (Vic), ss 5, 6AAA & 18.

***The Queen v Donker, Jessie***

Croucher J

[\[2018\] VSC 210](#)

11/05/2018

CRIMINAL LAW - Sentence - Manslaughter by unlawful and dangerous act - Guilty plea - Fight between deceased and friend of accused - Accused intervened - Threw deceased to ground - Stomped on deceased's head - Previous good character - Early plea of guilty - Remorse - Good prospects of rehabilitation.

***Director of Public Prosecutions [DPP] v Wan, Shengliang***

Kaye JA

[\[2018\] VSC 195](#)

30/04/2018



CRIMINAL LAW - Sentence following trial - Armed robbery - Intentionally causing serious injury - In 2011, accused, armed with loaded sawn-off shotgun, and brother robbed bottle shop proprietor - Accused fired gun at cash register in course of offence - No one endangered but shopkeeper frightened - After leaving bottle shop, accused fired shot into window of car in public street, causing serious injury to driver's wrist/thumb - Very serious offences - Deprived childhood - Limited prior and subsequent criminal history - Long delay in bringing charges - Considerable reform in ensuing years - Very strong prospects of rehabilitation - Hardship of imprisonment because of psychological afflictions - Relevance of parity given co-accused brother's sentence - Importance of general deterrence, denunciation, just punishment and rehabilitation - Less weight than otherwise to protection of community and specific deterrence because of such strong prospects of rehabilitation - Totality - Sentence of nine years' imprisonment on intentionally causing serious injury; six years' imprisonment on armed robbery (two years cumulative); total effective sentence of eleven years' imprisonment; non-parole period of seven years - Sentencing Act 1991 (Vic), ss 5 & 18.

***The Queen v Vitale, Craig***

[\[2018\] VSC 197](#)

27/04/2018

Croucher J

# 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 - Serious injury - knee injury - Capacity - Retraining.

***Schofield v Country West Gourmet Meat & Chicken Pty Ltd***

[\[2018\] VCC 614](#)

Judge Dyer

04/05/2018

CIVIL JURY TRIAL - Jury returned a verdict of “no” to the question as to whether there was negligence on the part of the defendant which was a cause of injury, in industrial injury trial - Leave reserved non obstante veredicto - Whether there was no evidence upon which the jury could return the verdict - Whether the jury verdict should be set aside.

***Petrovska v Australian Way Pty Ltd (Ruling No 2)***

[\[2018\] VCC 567](#)

Judge O’Neill

02/05/2018

CONTEMPT - Whether defendant is in contempt of orders previously made by the Court - Penalty.

***Huang v Zhi***

[\[2018\] VCC 529](#)

Judge Smith

02/05/2018

PRACTICE AND PROCEDURE - Application to set aside subpoenas to non-parties before trial - Whether legitimate forensic purpose test satisfied - Whether documents replicate plaintiff’s discovery - Subpoenas not set aside.

***DeltaPak Pty Ltd v A & RT Systems Pty Ltd***

[\[2018\] VCC 535](#)

Judge A Ryan

26/04/2018

# 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 - Rejection of Claim - Myalgic Encephalomyelitis/Chronic Fatigue Syndrome - Diagnosis/Causation - Two Influenza Vaccinations at Work - Whether Employment a Significant Contributing Factor to a Disease Contracted in the Course of Employment or to the Recurrence, Aggravation, Acceleration, Exacerbation or Deterioration of a Pre-Existing Injury or Disease - Accident Compensation Act ss.5, 82(2C).

***Rawlings v ANZ Bank***

[\[2018\] VMC 05](#)

Magistrate BR Wright

02/05/2018

WORKERS COMPENSATION - Accident Compensation Act 1985 - low back injury - Long period of employment with employer - Work required repeated instances of physically demanding work - Whether employment a significant contributing factor to aggravation type injury - Delay between alleged injury and incapacity - Conflict of evidence in plaintiff's recounting of incident of injury to employer - Lack of corroboration in certain historical accounts produced by doctors - Plaintiff's credit attacked - Reliance on surveillance - Application to draw *Jones v Dunkel* (1959) CLR inference - No adverse inference drawn - No current work capacity - Discourse as to burden of proof for no current capacity - Notice of rejection set aside.

***Beverley King v Qantas Airways Limited***

[\[2018\] VMC 06](#)

Magistrate P Ginnane

30/04/2018

CIVIL - Defamation - Publications on internet - Arbitration of small claim - Referred into Court as hearing pursuant to s104 of Magistrates' Court Act 1989 - Circumstances rendering proceeding inapplicable as an arbitration - Imputations - Defamation Act 2005 - Defence of Qualified Privilege - Defence of Contextual Truth - Damages - Method of assessment.

***Yuanjun Holdings Pty Ltd and Ors v Min Luo***

[\[2018\] VMC 07](#)

Magistrate P Ginnane

29/03/2018

# 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.

## Corporations Law

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Insolvency - Scheme of arrangement - Debt restructuring - Creditors - Corporate rescue regimes - Statutory moratorium - Re Bluebrook Ltd - Law reform proposals - UK  
**Payne, J.** "The role of the court in debt restructuring." (2018) 77(1) Cambridge L J 124-150.

## Courts

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Paperless courtroom - E-trials - Digital technology - Court administration - Case management systems - Paper-based processes - Electronic evidence - Technology solutions - Jurybooks - Cloud data storage - Smart phones - Tablets - Electronic filing - E-filing - Future challenges - Victoria  
**Derkley, K.** "Courts at a turning point." (2018) 92(5) LIJ 20-21.

## Criminal Law & Procedure

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Consent - Informed consent - Factual consent - Implied consent - Sexual transmission - HIV transmission - Offences against the person - Liability - Non-disclosure of HIV status - Inflicting grievous bodily harm - Criminalisation - R v Dica - R v Brown - R v Konzani - R v Cuerrier - R v Williams - R v Ewanchuk - Comparative analysis - Canada - USA - UK  
**Hughes, D.** "Did the individual consent to the risk of harm? A comparative jurisdictional analysis of consent in cases of sexual transmission exposure to HIV." (2018) 82(1) Crim L J 76-105.

Corporate homicide - Corporate crime - Corporate responsibility - Liability - Criminal responsibility - Involuntary manslaughter - Duty of care - Workplace deaths - Grenfell tower fire - R v Lion Steel Equipment Ltd - Health and Safety Executive v SR and RJ Brown - Corporate Manslaughter and Corporate Homicide Act 2007 (UK) - UK  
**Roper, V.** "The Corporate Manslaughter and Corporate Homicide Act 2007 - A 10-year review." (2018) 82(1) Crim L J 48-75.

Riot - Public order - Disorderly behaviour - Unlawful violence - Sport - Spectator behaviour - Plea of intoxication - International Football Association - Public Order Act 1986 (UK) - Kamara v DPP - R v NW - R v Muranyi - UK  
**Lowerson, A.** "Managing the unmanageable: the offence of riot in England and Wales." (2018) 82(1) Crim L J 35-47

## Legal Profession

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Legal practitioners - Barristers - Judiciary - Women Barristers - Sexual harassment - Workplace harassment - #MeToo campaign - Culture - UK  
**Plowden, S. and K. Brunner.** "TimesUp: calling it out at the Bar." [2018] (Apr) Counsel 14-16.

Personalia - Justice John Champion - Judge - Supreme Court of Victoria - Welcome - Victoria  
**Wilson, B.** "Justice John Champion." (2018) 92(5) LIJ 23.

## Medical Law

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Medical decisions - Medical treatment - Mental capacity - Decision making capacity - Powers of attorney - Medical Treatment Planning and Decisions Act 2016 (Vic) - Victoria

**O'Shea, B. and R. Park.** "Values and preferences for future medical treatment." (2018) 92(5) LIJ 27-29.

Patients - Mental capacity - Medical decisions - "Best interests" of the patient - Consent - Re F (Mental Patient: Sterilisation) - Aintree University Hospitals Foundation Trust v James - Briggs v Briggs - Nicklinson v Ministry of Justice - Medical Capacity Act 2005 (UK) - UN Convention on the Rights of Persons with Disabilities - UN Convention on Human Rights, article 8 - UK

**Jackson, E.** "From 'Doctor knows best' to dignity: placing adults who lack the centre of decisions about their mental health." (2018) 81(2) Modern L R 247-281.

## Property Law

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Covenants - Freehold covenants - Positive obligations - Doctrine of benefit and burden - Numerus clausus - Elwood v Goodman - Wilkinson v Kerdene - Austerberry v Oldham Corp - UK

**Bevan, C.** "The doctrine of benefit and burden: reforming the law on covenants numerus clausus "problem"." (2018) 77(1) Cambridge L J 72-96.

## Succession

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Wills - Estates - Informal wills - Wills Act 1997 (Vic), s7, s9 - Testator's intention - Successful applications - Unsuccessful applications - Costs - Victoria

**Barton, P.** "Informal wills." (2018) 92(5) LIJ 34-37.

## Torts

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Serious injury - Degree of impairment - Psychological injury - Transport accident claims - Transport Accident Act 1986 (Vic), 93(17) - TAC v Katanas - Humphries v Poljak - Fleming v Hutchison - Victoria - Australia  
**Lombard, M. and G. McCormack.** "Highly serious: the High Court's examination of "serious injury" in Katanas will guide future decisions." (2018) 92(5) LIJ 42-45.

## INFORMATION SESSIONS

The Law Library of Victoria hosts regular information sessions on how to use specific legal research databases.

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

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## LIBRARY FACTS

- The Law Library of Victoria is regarded as a library of national significance and is one of the largest law collections in the state, containing over 120,000 volumes.
- The oldest book in the collection is Statham's Abridgement of 1489, a case law digest.
- The largest portrait in the library is of John Schutt, the first librarian, who died in office after 54 years in the position.